

SJ Exhibit 5

RICHARD R. FRANK 3/10/2022

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<p>1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF MISSOURI 3 EASTERN DIVISION 4 5 JAMES GARAVAGLIA,) 6) 7 Plaintiff,) 8 vs.) Case No. 4:20-CV-1681-CDP 9) 10 CITY OF ST. LOUIS,) 11 et al.,) 12) 13 Defendants.) 14 15 VIDEO-RECORDED DEPOSITION OF RICHARD R. FRANK 16 TAKEN ON BEHALF OF THE DEFENDANT GREEN 17 MARCH 10, 2022 18 19 20 21 22 23 24 25</p>	<p>1 EXHIBITS 2 NO. DESCRIPTION PAGE 3 For Defendant Green: 4 Exhibit 7 7/18/19 notice of forced leave letter to James 5 Garavaglia 51 6 Exhibit 8 7/17/19 email from Richard Frank to Linda Thomas 51 7 8 Exhibit 9 8/28/19 withdraw of request of forced leave 9 letter to Richard Frank 56 10 11 Exhibit 10 8/28/19 letter to James Garavaglia re: 12 pre-termination review 83 13 14 Exhibit 11 5/20/16 salary increase request letter to Richard 15 Frank 66 16 17 Exhibit 12 Employee Status Forms 77 18 19 Exhibit 13 Employees Retirement System documents 81 20 For Plaintiff: 21 Exhibit O 6/1/16 email from Comptroller Darlene Green 22 with attached letters of 23 request 142 24 25 (Exhibits attached to original transcript.)</p>
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<p>1 I N D E X 2 WITNESSES 3 ALL WITNESSES PAGE 4 For Defendant Green 5 RICHARD R. FRANK 6 Examination by Mr. Norwood 8 Examination by Mr. Blanke 96 7 Re-Examination by Mr. Norwood 230 Re-Examination by Mr. Blanke 241 8 Re-Examination by Mr. Norwood 247 9 10 EXHIBITS 11 NO. DESCRIPTION PAGE 12 For Defendant Green: 13 Exhibit 1 Second Amended Complaint for Employment Discrimination 62 14 15 Exhibit 2 7/2/19 approval of request to place James Garavaglia 16 on forced leave 41 17 18 Exhibit 3 7/2/19 notice of forced leave letter to James 19 Garavaglia 43 20 21 Exhibit 4 7/18/19 withdraw of request of forced leave 22 letter to Richard Frank 46 23 24 Exhibit 5 7/18/19 request to place on leave letter to Richard 25 Frank 48 26 27 Exhibit 6 7/18/19 approval of request to place James Garavaglia on forced leave 49</p>	<p>1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF MISSOURI 3 EASTERN DIVISION 4 5 JAMES GARAVAGLIA,) 6) 7 Plaintiff,) 8 vs.) Case No. 4:20-CV-1681-CDP 9) 10 CITY OF ST. LOUIS,) 11 et al.,) 12) 13 Defendants.) 14 15 VIDEO-RECORDED DEPOSITION OF WITNESS, 16 RICHARD R. FRANK, produced, sworn and examined on 17 the 10th day of March, 2022, between the hours of 18 eight o'clock in the forenoon and six o'clock in 19 the afternoon of that day, at the offices of Lewis 20 Rice, 600 Washington Avenue, 25th Floor, St. Louis, 21 Missouri, before Tara Schwake, a Registered 22 Professional Reporter, Certified Realtime Reporter, 23 Certified Shorthand Reporter (IL), Certified Court 24 Reporter (MO), and Notary Public within and for the 25 State of Missouri.</p>

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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Uthoff Graeber Bobinette & Blanke</p> <p>5 906 Olive Street, Suite 300</p> <p>6 St. Louis, Missouri 63101</p> <p>7 (314) 621-9550</p> <p>8 by: Mr. Richard B. Blanke</p> <p>9 Mr. Paul L. Schmitz</p> <p>10 rblanke@ugbbblaw.com</p> <p>11 pschmitz@ugbbblaw.com</p> <p>12</p> <p>13 FOR THE DEFENDANT GREEN:</p> <p>14 Lewis Rice, LLC</p> <p>15 600 Washington Avenue, Suite 2500</p> <p>16 St. Louis, Missouri 63101</p> <p>17 (314) 444-7600</p> <p>18 by: Mr. Ronald A. Norwood</p> <p>19 Ms. Joy McMillen</p> <p>20 rnorwood@lewisrice.com</p> <p>21 jmcmlen@lewisrice.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 IT IS HEREBY STIPULATED AND AGREED by</p> <p>2 and between Counsel for Plaintiff and Counsel for</p> <p>3 Defendants that this deposition may be taken by</p> <p>4 Tara Schwake, Notary Public and Certified Realtime</p> <p>5 Reporter, thereafter transcribed into typewriting,</p> <p>6 with the signature of the witness being expressly</p> <p>7 reserved.</p> <p>8 THE VIDEOGRAPHER: We are now on the</p> <p>9 record. Today's date is March the 10th, 2022, the</p> <p>10 time is approximately 9:47 AM. This is the</p> <p>11 video-recorded deposition of Richard Frank in the</p> <p>12 matter of James Garavaglia versus the City of</p> <p>13 St. Louis, et al., Case Number 4:20-CV-1681-CDP, in</p> <p>14 the United States District Court for the Eastern</p> <p>15 District of Missouri.</p> <p>16 This deposition is being held at the</p> <p>17 law offices of Lewis Rice. Reporter's name is Tara</p> <p>18 Schwake, my name is David Doell and I am the legal</p> <p>19 videographer, we're here with Alaris Litigation</p> <p>20 Services.</p> <p>21 The attorneys attending please</p> <p>22 introduce yourselves and the parties you represent?</p> <p>23 MR. BLANKE: Is this working?</p> <p>24 Working okay? Richard Blanke and Paul Schmitz</p> <p>25 representing Plaintiff, James Garavaglia.</p>
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<p>1 FOR THE DEFENDANT CITY OF ST. LOUIS:</p> <p>2 City of St. Louis, Law Department</p> <p>3 City Counselor's Office</p> <p>4 1200 Market Street, Room 314</p> <p>5 St. Louis, Missouri 63103</p> <p>6 (314) 622-4554</p> <p>7 by: Ms. Sheena Hamilton, City Counselor</p> <p>8 hamiltons@stlouis-mo.gov</p> <p>9</p> <p>10 COURT REPORTER:</p> <p>11 TARA SCHWAKE, CRR, RPR, CCR, CSR</p> <p>12 DAVID DOELL, Videographer</p> <p>13 Alaris Litigation Services</p> <p>14 711 North 11th Street</p> <p>15 St. Louis, Missouri 63101</p> <p>16 (314) 644-2191</p> <p>17 1-800-280-DEPO</p> <p>18 transcripts@alarislitigation.us</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 MS. HAMILTON: Sheena Hamilton, City</p> <p>2 Counselor, representing the City of St. Louis.</p> <p>3 MR. NORWOOD: Ronald Norwood and Joy</p> <p>4 McMillen representing the Defendant, Darlene Green.</p> <p>5 THE VIDEOGRAPHER: The court reporter</p> <p>6 please swear in the witness and we may proceed.</p> <p>7 RICHARD R. FRANK,</p> <p>8 of lawful age, having been produced, sworn, and</p> <p>9 examined on the part of Defendant Green, testified</p> <p>10 as follows:</p> <p>11 *****</p> <p>12 (Deposition commenced at 9:47 AM)</p> <p>13 EXAMINATION</p> <p>14 QUESTIONS BY MR. NORWOOD:</p> <p>15 Q Okay, good morning, sir. As you</p> <p>16 know, my name is Ronald Norwood, and I will be</p> <p>17 examining you today in this lawsuit. Would you</p> <p>18 state your full name for the record, please?</p> <p>19 A Yes, it's Richard R. Frank,</p> <p>20 F-r-a-n-k.</p> <p>21 Q Okay. And, Mr. Frank, are you</p> <p>22 currently employed?</p> <p>23 A No.</p> <p>24 Q All right. When was the last time</p> <p>25 you were employed?</p>

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<p>1 A November 30th, 2021.</p> <p>2 Q All right. And where were you</p> <p>3 employed at that time?</p> <p>4 A City of St. Louis.</p> <p>5 Q How did it come about that you are no</p> <p>6 longer employed with the City of St. Louis?</p> <p>7 A I retired.</p> <p>8 Q And what -- what was the effective</p> <p>9 date of that retirement?</p> <p>10 A The effective date of retirement was</p> <p>11 1/1/22.</p> <p>12 Q Great. Thank you. What position</p> <p>13 did you hold when you retired from the City of</p> <p>14 St. Louis?</p> <p>15 A I was the director of personnel.</p> <p>16 Q How long did you work for the City of</p> <p>17 St. Louis?</p> <p>18 A Approximately 17 and a half years. I</p> <p>19 started June 1, 2004.</p> <p>20 Q Okay. Well, let's talk about your</p> <p>21 years of service with the City of St. Louis. When</p> <p>22 you started in June of 2004, what position did you</p> <p>23 hold?</p> <p>24 A Director of personnel.</p> <p>25 Q All right. And when you retired,</p>	<p>1 A I think so.</p> <p>2 Q After you graduated from Washington</p> <p>3 University, what did you do?</p> <p>4 A I was appointed to a year-long paid</p> <p>5 externship in personnel and labor relations for the</p> <p>6 State of Illinois, Department of Central Management</p> <p>7 Services, Bureau of Personnel.</p> <p>8 Q And what -- what was your job title?</p> <p>9 A I started out as a human</p> <p>10 resource/personnel analyst, and then became a -- a</p> <p>11 senior analyst.</p> <p>12 Q How long did you serve in those</p> <p>13 positions?</p> <p>14 A A total of five years.</p> <p>15 Q Okay. And what did you do next?</p> <p>16 A Then I became director of human</p> <p>17 resources for the St. Louis County court system.</p> <p>18 Q During what period of time did you</p> <p>19 serve as the director of personnel -- I'm sorry --</p> <p>20 director of human resources for the St. Louis</p> <p>21 County court system?</p> <p>22 A It was from 1989 until 2004.</p> <p>23 Q And based upon what you testified to,</p> <p>24 then, from there you would have transitioned to the</p> <p>25 director of personnel for the City of St. Louis?</p>
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<p>1 what position did you hold?</p> <p>2 A Director of personnel.</p> <p>3 Q Okay. And so just for the record,</p> <p>4 then, during your entire tenure at the City of</p> <p>5 St. Louis, you served as the director of personnel?</p> <p>6 A Yes, sir.</p> <p>7 Q All right. And we're going to talk</p> <p>8 more about your duties, responsibilities at the</p> <p>9 City of St. Louis. Let's talk first about your</p> <p>10 educational background.</p> <p>11 A Okay.</p> <p>12 Q If we could. Where did you go to</p> <p>13 school?</p> <p>14 A Undergraduate, I went to Washington</p> <p>15 University, and then I have approximately 18 hours</p> <p>16 of -- of graduate work.</p> <p>17 Q Okay. When did you go to Washington</p> <p>18 University?</p> <p>19 A 1979 through 1983.</p> <p>20 Q All right. And did you graduate?</p> <p>21 A Yes, I did.</p> <p>22 Q And what degree?</p> <p>23 A English literature.</p> <p>24 Q Okay. Nice pre-personnel director</p> <p>25 background, I take it.</p>	<p>1 A Yes.</p> <p>2 Q Great. All right. So let's talk</p> <p>3 about your job position with the City of St. Louis.</p> <p>4 What were your duties and responsibilities as</p> <p>5 director of personnel?</p> <p>6 A The duties of the director of</p> <p>7 personnel are defined under Article XVIII of the</p> <p>8 City Charter, and it is essentially to administer</p> <p>9 the civil service system. It's a full service</p> <p>10 human resource function with all the major</p> <p>11 functional areas of human resource.</p> <p>12 I also, pursuant to that ex-officio,</p> <p>13 was secretary to the Civil Service Commission, also</p> <p>14 secretary to the Employees Retirement System, and</p> <p>15 then pursuant to ordinance, later, secretary to the</p> <p>16 Firefighters Retirement Plan.</p> <p>17 Q Okay. Great. Let's talk a little</p> <p>18 bit about, you know, your job as the director of</p> <p>19 personnel. Give us a flavor for the types of</p> <p>20 issues you would handle in that capacity.</p> <p>21 A Certainly. I had section managers</p> <p>22 who were responsible for benefits. The City has a</p> <p>23 very large benefits program that covers about</p> <p>24 10,000 lives. I had responsibility for negotiating</p> <p>25 all benefits for City employees. We had a</p>

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<p style="text-align: right;">Page 13</p> <p>1 compensation and classification section which puts 2 together the compensation plan and also deals with 3 compensation issues. 4 We had an employee relations section 5 which is responsible for processing grievances, 6 drug and alcohol program, family medical leave 7 administration, you know, union negotiations on a 8 departmental level. 9 We had a training and organizational 10 development section, which was responsible for, you 11 know, training and organizational interventions at 12 the department level. We had a personnel services 13 section which administered payroll along with the 14 Comptroller's office and maintained personnel 15 records and files and resolved those kinds of 16 administrative issues. 17 And we then had the pension systems I 18 spoke of, the Employees Retirement System is a 19 multi-employer, IRS qualified plan which includes, 20 for instance, like the Art Museum, Tower Grove 21 Park, the zoo, et cetera, and then the Firefighters 22 Retirement Plan which, you know, covers all 23 employees, specifically those who were affected by 24 the Court of Appeals' decision which validated the 25 Firefighters Retirement Plan effective, I believe,</p>	<p style="text-align: right;">Page 15</p> <p>1 A No. 2 Q Okay. Was -- well, strike that. 3 You also talked about serving as 4 secretary of the Civil Service Commission. Tell us 5 about that. What were your duties and 6 responsibilities as secretary to the Civil Service 7 Commission? 8 A The secretary to the Civil Service 9 Commission schedules meetings for the Commission, 10 ensures that appropriate minutes are taken, makes 11 sure that the agenda -- agenda items are prepared, 12 makes sure that any appeals are -- are reviewed for 13 timeliness, and then scheduled appropriately, 14 either for the written submission process or the 15 formal evidentiary hearing process. 16 And then additionally, I contracted 17 with six different hearing officers, all of whom 18 were employment attorneys, three of those were 19 former Circuit Court judges to hear disciplinary 20 matters that went before the Commission. 21 Q Okay, great. Thank you. Who is 22 Linda Thomas? 23 A Linda Thomas was one of my former 24 deputy directors. 25 Q Okay. How many deputy directors did</p>
<p style="text-align: right;">Page 14</p> <p>1 retroactive to February 1, 2013. 2 And I believe that's it. 3 Q Okay. Who do you report to? 4 A I have a -- I reported in a -- 5 Q Or who did you report to, I'm sorry. 6 A Yeah. That's an interesting 7 question. The mayor serves as Chief Executive 8 Officer of the City, provided, however, that there 9 are any exception pursuant to Article XVIII. 10 So I had a opinion from prior City 11 Counselor, City -- City Counselor -- 12 MS. HAMILTON: I'm going to ask you 13 not to go into any attorney-client privilege 14 information. 15 THE WITNESS: Okay. 16 MS. HAMILTON: Okay. 17 Q (BY MR. NORWOOD) Yeah, okay. Well, 18 let me ask it this way. Did you report to the 19 mayor? 20 A Not directly. 21 Q All right. Did you report to the 22 Comptroller? 23 A No. 24 Q Did you report to the Board of 25 Aldermen?</p>	<p style="text-align: right;">Page 16</p> <p>1 you have as the director of personnel? 2 A I had one full-time deputy director, 3 Brian Beckelman, and then two part-time deputy 4 directors who were per performance. 5 Q And that included Linda Thomas? 6 A Yes. 7 Q All right. And what were the duties 8 and responsibilities of Linda Thomas as deputy 9 director? 10 A Linda Thomas assisted me in running 11 the day-to-day operations of the City and served as 12 a special resource in particular on the City's ERP 13 project for the last several years, which is the 14 exploration of converting the -- the old mainframe 15 system into a new City-wide integrated computer 16 system. 17 Q Now, when we talk about the City of 18 St. Louis and personnel, let's talk about the time 19 that you -- well, let's talk about when you left. 20 How many employees are there in the City of 21 St. Louis system? 22 A We had about, I believe, 6,300 23 authorized positions but maybe about 5,100 24 full-time positions that were filled. In addition 25 to that, there would be varying amounts of per</p>

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<p style="text-align: right;">Page 17</p> <p>1 performance employees and seasonal employees. We 2 called them hourly workers, or per performance. 3 Q Okay. And those employees, that 4 number 6,300, 5100, does that -- or did that 5 include full- and part-time employees? 6 A No. The 6,300 positions were 7 full-time. That excludes the several hundred per 8 performance employees, and depending on any 9 particular year, we could have 300 to 700 of those 10 per performance employees, especially during the 11 summer months. 12 Q And explain to us lay people, when 13 you say per performance employee, what is that? 14 A They are employees who work under 17 15 -- approximately 1,700 hours per year. They have 16 no set schedule per se, and don't receive any 17 benefits except those that would be provided under 18 the ACA Act. 19 Meaning that if it's anticipated they 20 would be working at least 30 hours per week for a 21 six-month period of time, they would get the 22 medical insurance benefits. 23 Q Okay. All right. Linda Thomas, did 24 she work at the City of St. Louis at the time you 25 retired?</p>	<p style="text-align: right;">Page 19</p> <p>1 compensatory time or vacation time for the period 2 of forced leave. If they elect not to take any 3 accrued leave during the period of forced leave and 4 it is found that discipline or dismissal is not 5 warranted, then they are entitled to back pay for 6 that period of time. 7 So it is not, in the eyes of the 8 Department of Personnel, property deprivation. 9 Q Okay. And one of the reasons you 10 identified as the use of forced leave is when an 11 employee could be a danger to the City. Is that 12 right? 13 A Yes. 14 Q And does that danger necessarily mean 15 physical danger or harm? 16 A No. 17 Q Okay. What are some other examples 18 of the type of danger to the City that might 19 warrant a forced leave? 20 A It could be use of -- misuse of the 21 City computer system for political reasons. It 22 could be if they have access to confidential 23 information that could be compromised. It could be 24 also used for investigative purposes. So an 25 employment authority would ask to place an employee</p>
<p style="text-align: right;">Page 18</p> <p>1 A Yes, she did. 2 Q Okay. Do you know if she's currently 3 employed with the City of St. Louis? 4 A No, she retired shortly after I did. 5 Q Okay. All right. Let's talk about 6 forced leave. Are you familiar with the process of 7 forced leave in the City of St. Louis? 8 A Yes. 9 Q Okay. What is forced leave? 10 A Forced leave is defined in Department 11 of Personnel Administrative Regulation 117. Forced 12 leave can be requested by an appointing authority, 13 to be approved by me, when an employee presents a 14 potential danger to themselves, to the community, 15 to the workplace, et cetera. 16 Q The forced leave process I believe 17 you just stated is governed by St. Louis City 18 Regulation 117? 19 A Yes. 20 Q Is forced leave considered 21 discipline? 22 A No. 23 Q Why do you say that? 24 A It is not considered discipline 25 because an employee may use any accrued</p>	<p style="text-align: right;">Page 20</p> <p>1 on forced leave pending either an investigation or, 2 in many instances, pending a pre-termination 3 review. 4 Q Okay. Why is it important to -- 5 well, strike that. 6 So when a person on forced leave, 7 essentially they are removed from the employment 8 site; is that correct? 9 A Yes. 10 Q Okay. Why is it important if, for 11 instance, there is an investigation, to remove an 12 employee from the employment site? 13 A We want to maintain the integrity of 14 the invest -- investigation process, and that would 15 include the employee not in any way altering or 16 removing records. 17 Similarly, we would not want them 18 discussing the investigation with any co-workers, 19 et cetera. So. 20 Q And -- and -- and so when we talk 21 about sensitive financial information, does that 22 vary based upon the position -- 23 A Yes. 24 Q -- of the particular -- okay, let 25 me --</p>

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<p>1 A I'm sorry. I'll let you finish.</p> <p>2 Q Just -- just so -- so that, really</p> <p>3 for our court reporter's benefit because she's</p> <p>4 trying to take us both down, so it's better to --</p> <p>5 A Sorry.</p> <p>6 Q -- have the -- sort of you're a</p> <p>7 tennis player, back and forth volley.</p> <p>8 So, okay. So when we talk about</p> <p>9 sensitive financial information, does that vary</p> <p>10 based upon the position?</p> <p>11 A Yes.</p> <p>12 Q All right. And let's talk about</p> <p>13 Mr. Garavaglia. Was he a high level employee?</p> <p>14 Considered a high level employee at the City of</p> <p>15 St. Louis?</p> <p>16 A Yes.</p> <p>17 Q As a high level employee of the City</p> <p>18 of St. Louis, did he have access to sensitive</p> <p>19 financial information?</p> <p>20 A Yes.</p> <p>21 Q All right. When forced leave is</p> <p>22 utilized by an appointing authority, does that</p> <p>23 automatically lead to some form of discipline?</p> <p>24 A No.</p> <p>25 Q Okay. Are you aware of situations</p>	<p>1 A If I received a request to appeal a</p> <p>2 forced leave, I would call in the administrative</p> <p>3 assistant to the Civil Service Commission, give it</p> <p>4 to her, if it were timely, which is within ten days</p> <p>5 of the notice of forced leave, and then ask him or</p> <p>6 her to schedule an appeal in front of a hearing</p> <p>7 officer.</p> <p>8 Q Okay. And in that context, the</p> <p>9 appeal of a forced leave, do you have an</p> <p>10 understanding as to what is being looked at by the</p> <p>11 hearing officer?</p> <p>12 A Yes.</p> <p>13 Q What is that that would be looked at</p> <p>14 by a hearing officer in that forced leave appeal</p> <p>15 context?</p> <p>16 A The hearing officer would examine</p> <p>17 whether or not there appeared to be sufficient</p> <p>18 justification to place the employee on forced leave</p> <p>19 and that was not being done for malicious reasons.</p> <p>20 Q Okay. When a person is placed on</p> <p>21 forced leave, what happens with respect to that</p> <p>22 individual remaining on the work site?</p> <p>23 A If a person is placed on forced</p> <p>24 leave, they are notified that they should not</p> <p>25 return to the work site.</p>
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<p>1 where an individual was placed on forced leave</p> <p>2 pending an investigation and then ultimately the</p> <p>3 veil was lifted where that individual was permitted</p> <p>4 to return to work?</p> <p>5 A Yes.</p> <p>6 Q Okay. When an individual is placed</p> <p>7 on forced leave, are there appeals processes that</p> <p>8 can be utilized --</p> <p>9 A Yes.</p> <p>10 Q -- by that -- by that employee?</p> <p>11 A Yes.</p> <p>12 Q Okay. And --and as the secretary for</p> <p>13 the Civil Service Commission, were you involved in</p> <p>14 those appeals?</p> <p>15 A Yes.</p> <p>16 Q All right. Tell us about that</p> <p>17 process, particularly as it relates to forced</p> <p>18 leave. The appeals process as related to forced</p> <p>19 leave.</p> <p>20 MR. BLANKE: Let me just object just</p> <p>21 to the form of the question calling for an unduly</p> <p>22 long narrative response.</p> <p>23 Q (BY MR. NORWOOD) Okay. And without</p> <p>24 having an unduly long narrative response, could you</p> <p>25 tell us about those processes?</p>	<p>1 Q Okay. What if they are already at</p> <p>2 the work site?</p> <p>3 A If they are currently at the work</p> <p>4 site, then they would typically be escorted off the</p> <p>5 work site.</p> <p>6 Q And why would they be escorted off</p> <p>7 the work site?</p> <p>8 A Because if they are being placed on</p> <p>9 forced leave, the appointing authority, in his or</p> <p>10 her opinion, believes that they present, you know,</p> <p>11 that imminent type of threat to the work site or</p> <p>12 themselves or the community.</p> <p>13 Q Okay. So are they escorted off the</p> <p>14 work site at the time they are notified that</p> <p>15 they're placed on forced leave?</p> <p>16 A Typically, yes.</p> <p>17 Q Okay. How long -- well, before I ask</p> <p>18 that -- strike that.</p> <p>19 In a situation where an employee is</p> <p>20 placed on forced leave, who has to approve that</p> <p>21 forced leave?</p> <p>22 A The appointing authority has the</p> <p>23 right to place the employee on forced leave, and</p> <p>24 then they have to receive permission, in writing,</p> <p>25 from me within 72 hours.</p>

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<p style="text-align: right;">Page 25</p> <p>1 Q Okay. Well, you say "from me,"</p> <p>2 meaning the director of personnel?</p> <p>3 A Director of personnel. Yes. No</p> <p>4 longer me, so.</p> <p>5 Q No, that's okay. But whoever is</p> <p>6 serving in that role as director of personnel would</p> <p>7 have to approve the forced leave. Is that correct?</p> <p>8 A Yes.</p> <p>9 Q And during the time that you were</p> <p>10 director of personnel, did you have to approve</p> <p>11 those forced leaves?</p> <p>12 A Yes.</p> <p>13 Q Were you considered a rubber stamp of</p> <p>14 those forced leaves? I mean, in other words, did</p> <p>15 you just routinely approve forced leaves?</p> <p>16 A No.</p> <p>17 Q What, in -- in your practice, and</p> <p>18 based upon your understanding of your</p> <p>19 responsibility as director of personnel, what would</p> <p>20 you do to determine whether or not to approve a</p> <p>21 forced leave?</p> <p>22 A I had to look at the totality of the</p> <p>23 circumstances to see if that serious threshold were</p> <p>24 met, that they presented, again, a potential threat</p> <p>25 to themselves or the City or -- or to, you know,</p>	<p style="text-align: right;">Page 27</p> <p>1 A It could take -- it varies greatly.</p> <p>2 It could take from a few days, if it were like a</p> <p>3 blood alcohol test, to sometimes several years if</p> <p>4 it were a matter that were in the police division,</p> <p>5 being investigated by the internal affairs division</p> <p>6 which involve criminal charges. So it did vary</p> <p>7 widely.</p> <p>8 Q Okay. Have there -- when you were</p> <p>9 director of personnel, were there situations,</p> <p>10 occasions, where a forced leave would be rescinded</p> <p>11 and then reinstated?</p> <p>12 A Yes.</p> <p>13 Q Was there anything out of the</p> <p>14 ordinary about that process while you were director</p> <p>15 of personnel?</p> <p>16 A It's unusual, but it did occur when</p> <p>17 more information was forthcoming that necessitated</p> <p>18 another -- a further investigation.</p> <p>19 Q Okay. So if I'm understanding your</p> <p>20 prior testimony, where, for instance, you said</p> <p>21 sometimes it could take years, as part of an</p> <p>22 investigation, as information comes in, does it</p> <p>23 continue to get extended?</p> <p>24 A Yes.</p> <p>25 Q Why?</p>
<p style="text-align: right;">Page 26</p> <p>1 the community.</p> <p>2 Q And when you say to the City, meaning</p> <p>3 that if it's a high level employee that has access</p> <p>4 to sensitive financial information, is that a</p> <p>5 factor that you would look at to consider whether</p> <p>6 or not to approve forced leave?</p> <p>7 A Yes.</p> <p>8 Q When a person is placed on forced</p> <p>9 leave, how long would that typically last?</p> <p>10 A It varies, sir. It depends on the</p> <p>11 length of the investigation, or when a</p> <p>12 pre-disciplinary or pre-termination review, you</p> <p>13 know, would be set. If the forced leave is -- if</p> <p>14 the appointing authority needs more than 30 days to</p> <p>15 complete the investigation, then they have to</p> <p>16 receive my approval of the extension.</p> <p>17 Q Okay. And is it common, and</p> <p>18 particularly in the context of an investigation,</p> <p>19 for there to be requests for extensions beyond the</p> <p>20 30 day window you identify?</p> <p>21 A Yes.</p> <p>22 Q Are you aware of situations -- well,</p> <p>23 strike that.</p> <p>24 How long would the typical</p> <p>25 investigation take?</p>	<p style="text-align: right;">Page 28</p> <p>1 A Because again, once you get into an</p> <p>2 investigation, you can find additional matters of</p> <p>3 concern. Additional allegations can surface.</p> <p>4 Q Okay. If additional information</p> <p>5 comes to light, in your experience as director of</p> <p>6 personnel, is it prudent to ignore that additional</p> <p>7 information as it comes in?</p> <p>8 A No.</p> <p>9 Q Why not?</p> <p>10 A Because all of that should be taken</p> <p>11 into consideration when making the ultimate</p> <p>12 determination as to whether or not the employee</p> <p>13 should be set for a pre-disciplinary review or a</p> <p>14 pre-termination review.</p> <p>15 Q Okay. And you identified situations</p> <p>16 where there was a forced leave, there was an</p> <p>17 investigation, and ultimately the individual</p> <p>18 returned to work. Is that right?</p> <p>19 A Yes.</p> <p>20 Q And would that be -- well, strike</p> <p>21 that.</p> <p>22 Under what circumstances would, once</p> <p>23 that process works, would an individual be returned</p> <p>24 to work? Give us examples of how that operates.</p> <p>25 A We had a situation, for instance,</p>

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<p style="text-align: right;">Page 29</p> <p>1 where an employee was accused of -- of workplace 2 violence, and it was invest -- and so he was placed 3 on forced leave. 4 And then upon further review, he was 5 allowed to return because they did not -- the 6 appointing authority did not believe that the 7 threat was truly physical harm. 8 But then the employee, upon returning 9 to work, made a very viable threat and made 10 physical contact with a supervisor, so he was 11 placed on forced leave again. 12 We've had situations in the police 13 division where the person was placed on forced 14 leave due to a complaint through perhaps the -- a 15 Civilian Oversight Board or through a, you know, a 16 member of the public, and while the particular 17 charge or allegation was found not meritorious, the 18 internal affairs division uncovered other 19 circumstances during its investigation that 20 warranted forced leave again. 21 Q Okay. So if I'm understanding you, 22 if there was an investigation and it turns out 23 that, you know, there's not a basis for the next 24 step, which could be discipline, what happens then 25 to that employee?</p>	<p style="text-align: right;">Page 31</p> <p>1 that circumstance? 2 A They are paid for the period that 3 they were off on forced leave. 4 Q And what about them returning to 5 work? 6 A They would return to work, you know, 7 upon the expiration -- or the rescission of the 8 forced leave. 9 Q Okay. If an individual is ultimately 10 disciplined, and we're going to talk a little bit 11 more about the discipline in that process, are you 12 aware of situations where that disciplined employee 13 appealed that discipline? 14 A Yes. 15 Q And if that employee is successful in 16 that appeal, what happens to the employee? 17 A That depends on the decision of the 18 Civil Service Commission. They can totally 19 overturn the discipline, in which case the employee 20 is made whole in terms of any lost pay and 21 seniority, et cetera, or the Commission retains the 22 right to reduce the discipline if they feel that 23 there, you know, were -- there were some fault on 24 the part of the employee but that the discipline 25 imposed by the appointing authority was excessive.</p>
<p style="text-align: right;">Page 30</p> <p>1 A The person would be returned to work 2 if there was no basis for it. 3 Q And what about any utilization of -- 4 of time? 5 A Yes, sir. As I addressed previously, 6 if they elected to take any accrued compensatory 7 time or vacation leave, then they've already been 8 paid, you know, for that time. And if the period 9 of forced leave were greater than what they had, 10 they would be restored the difference. 11 As an example, if they had only two 12 weeks of time and the forced leave were for three 13 weeks and they were found not to be at fault, they 14 would get the one week time difference. 15 If they elected not to take any time 16 during this period of forced leave for that three 17 weeks, they would get paid for the entire three 18 weeks. 19 Q Okay. All right. Now, what about 20 appeals processes? Are you aware of situations 21 where an individual was placed on forced leave and 22 appealed and ultimately the forced leave was 23 rescinded? 24 A Yes. 25 Q And what happens to the employee in</p>	<p style="text-align: right;">Page 32</p> <p>1 Q Okay. So -- so it sounds like the 2 Commission, then, serves as sort of a watchdog to 3 make sure that, if there's discipline of a civil 4 service employee, that it -- it's justified, and, 5 therefore, can effectively remove any discipline 6 and send that employee back to work. Is that 7 right? 8 A Yes. 9 Q And restore any lost benefits? 10 A Yes. 11 Q Is it your understanding that an 12 appointing authority needs proof that an individual 13 engaged in misconduct before an individual is 14 placed on forced leave? 15 A No. 16 Q You identify forced leave as a way to 17 remove an employee from the workplace while an 18 investigation is going on. Why is it important to 19 remove an employee from the workplace while the 20 investigation is going on? 21 A Because -- 22 MR. BLANKE: Objection, asked and 23 answered. 24 MS. HAMILTON: You can answer. 25 A Because if the allegations are so</p>

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<p style="text-align: right;">Page 33</p> <p>1 serious, in the director's opinion, to meet that</p> <p>2 threshold of needing to remove the employee from</p> <p>3 the workplace, it's important for the safety of the</p> <p>4 City, of the employee, of the co-workers, that</p> <p>5 those allegations are thoroughly investigated, you</p> <p>6 know, be -- and that the person is not, you know,</p> <p>7 presenting a -- presenting a threat.</p> <p>8 So we -- we feel that action is -- is</p> <p>9 necessary.</p> <p>10 Q (BY MR. NORWOOD) Is an individual</p> <p>11 who is on forced leave, is their access to the</p> <p>12 City's computer system restricted in any way?</p> <p>13 A It is supposed to be restricted, yes.</p> <p>14 Q And why is that?</p> <p>15 A Because, again, we would not want the</p> <p>16 person going in and either damaging or altering or</p> <p>17 removing records.</p> <p>18 Q Okay. And if an individual, in the</p> <p>19 case of a forced leave, when that forced leave is</p> <p>20 removed and the individual returns to work, and</p> <p>21 that -- that access would be reestablished; is that</p> <p>22 right?</p> <p>23 A Yes.</p> <p>24 Q Let's talk about pre-termination.</p> <p>25 What is pre-termination?</p>	<p style="text-align: right;">Page 35</p> <p>1 with respect to the employee returning to work and</p> <p>2 restoration of any benefits?</p> <p>3 A Again, typically, if a person is</p> <p>4 placed on -- if they are notified that they are</p> <p>5 being placed on -- I'm sorry, if they are being set</p> <p>6 for a pre-termination review, the appointing</p> <p>7 authority would consult with myself and possibly</p> <p>8 the law department, and in most cases those people</p> <p>9 would be placed on forced leave because the</p> <p>10 employee is put on notice that they may be losing</p> <p>11 their job.</p> <p>12 So in most instances the employee</p> <p>13 would be placed on forced leave and then again that</p> <p>14 process that we discussed would trigger where they</p> <p>15 could either elect to take time that they have</p> <p>16 accrued, or not.</p> <p>17 Q And if that happens, though, and it's</p> <p>18 ultimately determined that, based on those</p> <p>19 incidents you identified, that there was no basis</p> <p>20 for discipline, what happens to that employee in</p> <p>21 terms of returning to work and restoration of</p> <p>22 benefits?</p> <p>23 A Then the employee is returned to work</p> <p>24 as -- as quickly as possible, and the employee, if,</p> <p>25 again, if they took any time, if the period of</p>
<p style="text-align: right;">Page 34</p> <p>1 A Pre-termination is a process whereby</p> <p>2 an employee is officially put on notice via letter</p> <p>3 that the City -- the appointing authority</p> <p>4 specifically is contemplating the need to dismiss</p> <p>5 them from their job.</p> <p>6 Q Okay.</p> <p>7 A It's -- it's outlined in</p> <p>8 Administrative Regulation 117 in -- in terms of how</p> <p>9 that procedure works and what the necessary</p> <p>10 elements are.</p> <p>11 Q Does -- well, once a pre-termination</p> <p>12 notice is sent, does that process lead to</p> <p>13 termination?</p> <p>14 A It leads to a pre-termination review,</p> <p>15 which is not a formal hearing, but it is a review</p> <p>16 where the employee and his or her representative</p> <p>17 can review the evidence and also respond to any of</p> <p>18 the allegations and basically fulfill the elements</p> <p>19 that are required under Administrative Regulation</p> <p>20 117.</p> <p>21 Q Okay. And are you aware of</p> <p>22 situations where that process has occurred and the</p> <p>23 -- and no discipline was issued?</p> <p>24 A Yes.</p> <p>25 Q And if that happens, what happens</p>	<p style="text-align: right;">Page 36</p> <p>1 forced leave were greater than the amount of time</p> <p>2 they were on forced leave, they would be paid the</p> <p>3 difference.</p> <p>4 If they were not, if they choose not</p> <p>5 to take any time, they get paid for that -- that</p> <p>6 period of forced leave and, you know, any seniority</p> <p>7 or any holidays, you know, they're made whole</p> <p>8 essentially under -- under our rules.</p> <p>9 Q But during the forced leave period of</p> <p>10 time and during the pre-termination period of time,</p> <p>11 essentially they are on paid leave. Is that right?</p> <p>12 MR. BLANKE: Objection, leading.</p> <p>13 Q (BY MR. NORWOOD) Well, are they on</p> <p>14 paid leave in that circumstance?</p> <p>15 A It can be either paid or on -- on</p> <p>16 leave without pay.</p> <p>17 Q Okay. All right. Once a</p> <p>18 pre-termination -- is it a pre-termination hearing;</p> <p>19 is that what it's called?</p> <p>20 A We call it a pre-termination review.</p> <p>21 Q Okay. Once a pre-termination review</p> <p>22 happens, and if there is a determination of a need</p> <p>23 to impose some form of discipline, can the employee</p> <p>24 appeal that determination to the Civil Service</p> <p>25 Commission?</p>

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<p>1 A Yes.</p> <p>2 Q All right. And if that happens, what</p> <p>3 happens at the Civil Service Commission level in</p> <p>4 terms of presentation of evidence, things of that</p> <p>5 sort?</p> <p>6 A What we would do is ensure -- I would</p> <p>7 ensure my assistant and secretary that the appeal</p> <p>8 to the Civil Service Commission was timely, meaning</p> <p>9 within ten days of notification of the results of</p> <p>10 the pre-termination review.</p> <p>11 We would then set the hearing in</p> <p>12 front of one of our hearing officers, and that is</p> <p>13 the -- the evidentiary hearing process is a full</p> <p>14 hearing that complies with the rules for a</p> <p>15 contested hearing. They can cross-examine</p> <p>16 witnesses, et cetera.</p> <p>17 Q So at that level, the employee could</p> <p>18 then present evidence to clear his or her name if</p> <p>19 they feel they have been falsely disciplined; is</p> <p>20 that right?</p> <p>21 MR. BLANKE: Objection, leading.</p> <p>22 Q (BY MR. NORWOOD) Subject to that.</p> <p>23 A Yes.</p> <p>24 Q Are you aware of situations where</p> <p>25 that happened? In other words, there was</p>	<p>1 advising that the Deputy Comptroller, Garavaglia,</p> <p>2 was -- they were concerned that he was involved in</p> <p>3 some serious fiscal issues and was not complying</p> <p>4 with the Comptroller's office's protocols, and that</p> <p>5 they were so serious as to warrant a</p> <p>6 pre-termination review.</p> <p>7 Q (BY MR. NORWOOD) All right. And</p> <p>8 that was by way of a phone call?</p> <p>9 A Yes, sir.</p> <p>10 Q Do you recall when that phone call</p> <p>11 occurred?</p> <p>12 A I don't remember the exact month. I</p> <p>13 know it was a Saturday afternoon at approximately</p> <p>14 1:30 PM.</p> <p>15 Q All right. Is it common for you to</p> <p>16 receive an oral request for forced leave?</p> <p>17 A Yes.</p> <p>18 Q And when you receive an oral request</p> <p>19 for forced leave, do you -- if you agree, does it</p> <p>20 happen at that point in time, once you have</p> <p>21 approved it orally?</p> <p>22 A It still has to be ratified by me via</p> <p>23 the 72 hour written notification. So the</p> <p>24 appointing authority may call me or, again, like</p> <p>25 the law department, to discuss a particular matter</p>
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<p>1 discipline following the pre-termination review,</p> <p>2 there was an appeal to the Civil Service</p> <p>3 Commission, and the Civil Service Commission</p> <p>4 determined that the discipline was improper, and</p> <p>5 the individual was returned to work?</p> <p>6 A Yes.</p> <p>7 Q Is it fair to say that this whole</p> <p>8 Civil Service Commission process is a safeguard to</p> <p>9 avoid a situation where a civil service employee is</p> <p>10 wrongfully charged?</p> <p>11 A Yes.</p> <p>12 Q Okay. Let's talk about</p> <p>13 Mr. Garavaglia's forced leave situation. Did you</p> <p>14 have any involvement in that forced leave process?</p> <p>15 A Yes.</p> <p>16 Q Tell us about your involvement in</p> <p>17 that process as it relates to Mr. Garavaglia.</p> <p>18 MR. BLANKE: Objection. Calls for an</p> <p>19 unduly long narrative response.</p> <p>20 Q (BY MR. NORWOOD) Subject to that</p> <p>21 sir, and unless --</p> <p>22 MS. HAMILTON: You can answer.</p> <p>23 A I received a phone call on a Saturday</p> <p>24 -- Saturday afternoon from the appointing authority</p> <p>25 designate -- for the Comptroller, Judy Armstrong,</p>	<p>1 to see if they think this is something that would</p> <p>2 warrant forced leave, given the nature of the</p> <p>3 allegations, and then it's the appointing</p> <p>4 authority's determination as to whether or not to</p> <p>5 proceed.</p> <p>6 And they have 72 hours, if they do</p> <p>7 place the person on forced leave, to get that</p> <p>8 notice to me so that I can review it and look at it</p> <p>9 to see if it warrants, in the director's opinion,</p> <p>10 you know, ratification -- formal -- formal approval</p> <p>11 of that forced leave request.</p> <p>12 Q Okay. Ultimately, did you approve</p> <p>13 the forced leave for Mr. Garavaglia?</p> <p>14 A Yes.</p> <p>15 Q Why did you approve the forced leave</p> <p>16 request for Mr. Garavaglia?</p> <p>17 MR. BLANKE: Well, let me object in</p> <p>18 that the form of the question is a compound</p> <p>19 question because he was relieved -- he was placed</p> <p>20 on forced leave on multiple occasions and the</p> <p>21 question doesn't relate to any particular equation,</p> <p>22 so it's -- occasion, so it's overly broad as well.</p> <p>23 MR. NORWOOD: Fair objection.</p> <p>24 Q (BY MR. NORWOOD) Why don't we -- you</p> <p>25 have before you a binder of certain exhibits, and</p>

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<p>1 why don't we turn to that binder. And I'm going to</p> <p>2 direct your attention to tab number 2. It's</p> <p>3 actually marked Frank Depo Exhibit 2. Could you</p> <p>4 turn to tab 2?</p> <p>5 A Are you referring, sir, to the July 2</p> <p>6 letter?</p> <p>7 Q Uh, if --</p> <p>8 A Okay. I have it.</p> <p>9 Q If you look at the bottom, it says</p> <p>10 Frank Depo Exhibit 2.</p> <p>11 A I have it.</p> <p>12 Q Do you see that?</p> <p>13 A Yes, thank you.</p> <p>14 Q Okay. What is Frank Deposition</p> <p>15 Exhibit 2?</p> <p>16 A This is a letter from Comptroller</p> <p>17 Green to me requesting that I approve formally</p> <p>18 Mr. Garavaglia's forced leave.</p> <p>19 Q Okay. And there is some writing on</p> <p>20 that document; is that correct?</p> <p>21 A Yes.</p> <p>22 Q Whose writing is that?</p> <p>23 A That's mine.</p> <p>24 Q And could you read what you wrote on</p> <p>25 -- well, whenever you wrote it?</p>	<p>1 apologize.</p> <p>2 MS. HAMILTON: We'll get it for you.</p> <p>3 Q (BY MR. NORWOOD) Okay.</p> <p>4 A Pardon me, I believe, though, it's</p> <p>5 S-e-w-r-i-g-h-t.</p> <p>6 Q Okay.</p> <p>7 A I may be wrong.</p> <p>8 Q And who is that?</p> <p>9 A She's another high level official in</p> <p>10 the Comptroller's office.</p> <p>11 Q Okay. So once the forced leave was</p> <p>12 approved, would that then begin the processes you</p> <p>13 described about removing an individual from the</p> <p>14 workplace?</p> <p>15 A Yes.</p> <p>16 Q And restricting that individual's</p> <p>17 access, in the case of Mr. Garavaglia, access to</p> <p>18 sensitive financial information?</p> <p>19 A Yes.</p> <p>20 Q Let's turn to Frank Deposition</p> <p>21 Exhibit 3. Which is the next tab. What is that</p> <p>22 document?</p> <p>23 A This is the letter from Comptroller</p> <p>24 Green advising the employee, Mr. Garavaglia, that</p> <p>25 he is being officially placed on forced leave, and</p>
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<p>1 A Yes. It's "Approved RF 7/2/19."</p> <p>2 Q Okay. And did that mean that you</p> <p>3 would have approved the forced leave on 7/2/19 for</p> <p>4 Mr. Garavaglia?</p> <p>5 A Yes.</p> <p>6 Q Why did you approve this particular</p> <p>7 forced leave request for Mr. Garavaglia?</p> <p>8 A I approved this based on the -- the</p> <p>9 discussion I had just several days before, I</p> <p>10 believe this is probably a Monday, but several days</p> <p>11 before with Judy Armstrong and I believe</p> <p>12 Comptroller was on the phone line but I did not</p> <p>13 speak with her, and Beth Seright.</p> <p>14 Q Excuse me?</p> <p>15 A I believe Beth Seright might have</p> <p>16 been on the phone, but the person I spoke to only</p> <p>17 was Judy Armstrong.</p> <p>18 Q Okay. I just want to make she --</p> <p>19 she's right now. That last name, who was the other</p> <p>20 person you identified other than the Comptroller</p> <p>21 who may have been on?</p> <p>22 A Beth Seright.</p> <p>23 Q Could you spell that for our court</p> <p>24 reporter?</p> <p>25 A I cannot spell the last name, I</p>	<p>1 of his right to use any accumulated time during</p> <p>2 that period.</p> <p>3 Q Okay. And just for the record, it</p> <p>4 looks like you were copied on that letter from</p> <p>5 Comptroller Darlene Green to Mr. Garavaglia;</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q And it looks like Judy Armstrong was</p> <p>9 also copied on that letter; is that right?</p> <p>10 A Yes.</p> <p>11 Q And she is, Judy Armstrong that is,</p> <p>12 is designated as the appointing authority?</p> <p>13 A As the appointing authority designee.</p> <p>14 Q Okay. And when you say "appointing</p> <p>15 authority designee," what does that mean?</p> <p>16 A That's a form authorization, a form</p> <p>17 that's filed with the Department of Personnel that</p> <p>18 allows the designee to perform certain types of</p> <p>19 actions. In the case of Ms. Armstrong, she's</p> <p>20 authorized to sign off on any and all personnel</p> <p>21 related matters.</p> <p>22 Q On -- as it relates to which</p> <p>23 department?</p> <p>24 A To the Comptroller's office.</p> <p>25 Q Okay. And actually you remind me.</p>

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<p>1 Let me -- let us, meaning whoever watches this</p> <p>2 video, reads this transcript, get a sense as to</p> <p>3 these departments within the City. How many City</p> <p>4 departments are there?</p> <p>5 A Over thirty major departments. And</p> <p>6 then we have cost centers within them with various</p> <p>7 appointing authorities, but over thirty major</p> <p>8 departments.</p> <p>9 Q Okay. And one of those departments</p> <p>10 would be the Comptroller's office?</p> <p>11 A Yes.</p> <p>12 Q All right. Would the mayor's office</p> <p>13 be considered a department?</p> <p>14 A No.</p> <p>15 Q Okay.</p> <p>16 A May I clarify? Not in terms of</p> <p>17 personnel related issues. Because all of the</p> <p>18 Comptroller's employees, every single one is a</p> <p>19 civil service employee. The mayor, her department</p> <p>20 directors and the mayor's staff are all excepted</p> <p>21 positions which are not within the civil service</p> <p>22 system or under my prior authority as director.</p> <p>23 Q So certain departments fit within the</p> <p>24 umbrella of the mayor's office; is that right?</p> <p>25 A Only the department heads who are</p>	<p>1 to withdraw her request of forced leave for</p> <p>2 Mr. Garavaglia.</p> <p>3 Q Okay. I think you said "the next</p> <p>4 day." Let's put it in context. If you go back and</p> <p>5 look at the prior exhibit, that exhibit and the</p> <p>6 prior set of exhibits on July 2 --</p> <p>7 A Oh, I'm sorry, yeah, I looked at the</p> <p>8 date wrong.</p> <p>9 Q -- July 2, 2019, was the original</p> <p>10 forced leave. Is that right?</p> <p>11 A Yes. I misread the -- the date.</p> <p>12 Q That's okay. I just want to make</p> <p>13 sure the record is clear.</p> <p>14 So the next document, Frank's</p> <p>15 Deposition Exhibit 4, for the record, is a letter</p> <p>16 dated July 18, 2019. Is that correct?</p> <p>17 A Yes.</p> <p>18 Q And is that a letter to you from</p> <p>19 Comptroller Darlene Green?</p> <p>20 A Yes, it is.</p> <p>21 Q And what is that letter?</p> <p>22 A Are you referring, sir, to Exhibit 4</p> <p>23 again?</p> <p>24 Q Exhibit 4, yes.</p> <p>25 A Yes, that's a letter from the</p>
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<p>1 appointed directly by her are what they're known as</p> <p>2 excepted positions. For instance, the City</p> <p>3 Counselor, or the director of -- of the health</p> <p>4 department, et cetera.</p> <p>5 Q Okay. What about the Comptroller's</p> <p>6 office which you said is a separate department.</p> <p>7 Does that fit under the mayor's umbrella?</p> <p>8 A No.</p> <p>9 Q And that is considered a separate arm</p> <p>10 of the City?</p> <p>11 A It's not considered separate. The</p> <p>12 Comptroller herself is an elected official but all</p> <p>13 of her employees are civil service positions and</p> <p>14 ultimately governed in personnel matters by the</p> <p>15 Department of Personnel and Civil Service</p> <p>16 Commission.</p> <p>17 Q But the people within her department</p> <p>18 ultimately would report to her as an elected</p> <p>19 official?</p> <p>20 A Yes, as the appointing authority.</p> <p>21 Q As the appointing authority. Okay.</p> <p>22 Let's turn to tab number 4, Frank Depo Exhibit 4.</p> <p>23 What is that document?</p> <p>24 A That is a letter from Comptroller</p> <p>25 Green the next day asking that she would like</p>	<p>1 Comptroller advising me that she would like to</p> <p>2 officially withdraw the request for forced leave</p> <p>3 for Mr. Garavaglia.</p> <p>4 Q All right. And it looks like</p> <p>5 Mr. Garavaglia was copied on that document. Is</p> <p>6 that right?</p> <p>7 A Yes.</p> <p>8 Q It looks like Judy Armstrong, as</p> <p>9 appointing authority, was -- or appointing</p> <p>10 authority designee was copied on that document;</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And it also identifies a person,</p> <p>14 Nancy Kistler, Deputy City Counselor; is that</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q Is it your understanding that Nancy</p> <p>18 Kistler had involvement as Deputy City Counselor in</p> <p>19 some of the processes involved in this --</p> <p>20 A Yes.</p> <p>21 Q -- some of the processes involved in</p> <p>22 this case as it relates to Mr. Garavaglia?</p> <p>23 A Yes, sir.</p> <p>24 Q Let's go to Frank Deposition Exhibit</p> <p>25 5. And what is Frank Deposition Exhibit 5?</p>

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<p>1 A This is a request from Comptroller 2 Green dated July 18, asking that I place 3 Mr. Garavaglia -- or approve Mr. Garavaglia's 4 forced leave for serious fiscal improprieties. 5 Q Okay. Did you ultimately approve 6 that request? 7 A Yes, I did. 8 Q All right. Let's turn to the next 9 tab, Frank Depo Exhibit 6. What is that document? 10 A This is a copy of my approval of the 11 request for a forced leave for Mr. Garavaglia dated 12 July 18, 2019. 13 Q Okay. And there is some writing on 14 that document; is that correct? 15 A Yes. 16 Q And whose writing is that? 17 A That is mine. 18 Q And for the record, could you read 19 what you wrote on July 18, 2019? 20 A "Approved RF 7/18/19." 21 Q All right. And why did you approve 22 this request for forced leave? 23 A I approved this request for 24 essentially the same reasons, which were the 25 allegations made by Comptroller that -- and that</p>	<p>1 know, a number of employees, subordinate employees. 2 He was a -- one of the second highest ranking 3 people in the office of the Comptroller who is the 4 Chief Financial Officer for the City, so. 5 Q Okay. Let's turn to the next tab, 6 which is tab -- tab 7. And that appears to be a 7 letter dated July 18, 2019, to Mr. Garavaglia from 8 Comptroller Darlene Green. Is that correct? 9 A Yes. 10 Q And did this reference the forced 11 leave that you approved on July 18, 2019? 12 A Yes. 13 Q And were you also copied on this 14 particular communication? 15 A Yes. 16 Q All right. Let's go to the next 17 document, Frank Deposition Exhibit 8, tab 8. And 18 what is that item? 19 A I need to read it here first. 20 Q Yeah, take your time. 21 A This is a -- an email from Deputy 22 City Counselor -- I'm sorry, deputy director of 23 personnel, Linda Thomas, to myself explaining -- or 24 documenting for me a conversation she had with 25 Comptroller regarding the process for rescinding</p>
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<p>1 they were -- they were investigating serious fiscal 2 improprieties and some issues of -- related to that 3 from Mr. Garavaglia. 4 Q Okay. And would an investigation 5 into serious fiscal improprieties justify a forced 6 leave? 7 A Yes. 8 Q For the reasons you've already 9 stated? 10 A Yes. 11 Q Does it become more important when 12 you have an individual who is a high level employee 13 of the City? 14 A Yes. 15 Q Why? 16 A Because of the magnitude of their 17 decisions. They have a greater impact to 18 decision-making, and they also have, typically, 19 involvement in contracts and with vendors and the 20 magnitude of their authority is greater. So it's 21 amplified. 22 Q What about their supervisory 23 authority? 24 A That's certainly another issue, they 25 -- being as high as Mr. Garavaglia was, he had, you</p>	<p>1 and reinstituting forced leave under the provisions 2 of Administrative Regulation 117. 3 Q Okay. And -- and just for the 4 record, let's -- let's read this into the record. 5 The email to you from Linda Thomas -- 6 who was your deputy at the time; correct? 7 A Yes. 8 Q The email from Linda Thomas to you is 9 dated Wednesday, July 17, 2019, at 2:35 PM. Is 10 that correct? 11 A Yes. 12 Q All right. And -- 13 MS. HAMILTON: It's 2:33. 14 A 2:33. 15 Q (BY MR. NORWOOD) I'm sorry. 16 Actually, it looks like there are two emails; is 17 that right? 18 MS. HAMILTON: Yes. 19 Q (BY MR. NORWOOD) I mean, within the 20 one -- it looks like an email string; is that -- 21 A It is, yeah. Thank you. 22 Q Okay. All right. So -- so the 23 second, or the top of the string is an email from 24 you to Linda Thomas; is that correct? 25 A Yes.</p>

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<p>1 Q And that appears to have been -- and</p> <p>2 that email is dated Wednesday, July 17, 2019, at</p> <p>3 2:35 PM; is that correct?</p> <p>4 A Yes.</p> <p>5 Q And that was in response, it appears,</p> <p>6 to an email that Linda Thomas sent to you on</p> <p>7 Wednesday, July 17, 2019, at 2:33 PM. Is that</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. And let's read what she wrote</p> <p>11 to you at 2:33 PM on July 17, 2019. It says,</p> <p>12 quote, (Quote as read):</p> <p>13 Rick, I told the Comptroller to</p> <p>14 withdraw her request for forced leave</p> <p>15 on JG.</p> <p>16 Let me pause there, and do you know</p> <p>17 who JG was?</p> <p>18 A Yes.</p> <p>19 Q Who was that?</p> <p>20 A Mr. Garavaglia.</p> <p>21 Q Okay. Reading further it says,</p> <p>22 quote, (Quote as read):</p> <p>23 All she has to do is for you to</p> <p>24 withdraw the request and she has to</p> <p>25 give him a copy and then give back</p>	<p>1 A Yes.</p> <p>2 Q It goes further, says, quote, (Quote</p> <p>3 as read):</p> <p>4 The reason for that first leave would</p> <p>5 be he has access to a lot of</p> <p>6 confidential files and computer</p> <p>7 systems and the investigation would</p> <p>8 lead to disciplinary action up to, it</p> <p>9 says, an, a-n, including termination.</p> <p>10 You see that?</p> <p>11 A Yes.</p> <p>12 Q And is that --</p> <p>13 MS. HAMILTON: And I would just say</p> <p>14 it says "the forced leave" instead of the first</p> <p>15 leave.</p> <p>16 MR. NORWOOD: Did I say first leave?</p> <p>17 MS. HAMILTON: Yes, sir.</p> <p>18 MR. NORWOOD: Okay. Well, let me</p> <p>19 read it so we get it right in the record.</p> <p>20 Q (BY MR. NORWOOD) (Quote as read):</p> <p>21 The reason for the forced leave would</p> <p>22 be he has access to a lot of</p> <p>23 confidential files and computer</p> <p>24 systems and the investigation would</p> <p>25 lead to disciplinary action up to an,</p>
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<p>1 any of this time he has used.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q All right. And is that your</p> <p>5 understanding as to what the proper procedure</p> <p>6 should have been in order --</p> <p>7 A Yes. I'm sorry, didn't mean to --</p> <p>8 Q That's okay.</p> <p>9 A Pardon me.</p> <p>10 Q Is it your understanding that that</p> <p>11 was the proper procedure to be used with respect to</p> <p>12 rescinding the original forced leave and</p> <p>13 reinstituting a new forced leave?</p> <p>14 A Yes.</p> <p>15 Q Reading further, it says, quote,</p> <p>16 (Quote as read):</p> <p>17 Then I told her she could send you a</p> <p>18 letter requesting forced leave again,</p> <p>19 give him a copy, and tell him he is</p> <p>20 being put on forced leave pending an</p> <p>21 investigation.</p> <p>22 Is that a fair reading?</p> <p>23 A Yes.</p> <p>24 Q And is that an accurate description</p> <p>25 of what the proper procedure would be?</p>	<p>1 a-n, including termination.</p> <p>2 Is that a fair reading of what's I</p> <p>3 -- what's in the communication?</p> <p>4 A Yes.</p> <p>5 Q And is that consistent with your</p> <p>6 assessment of the reason why you approved the</p> <p>7 second forced leave and the first forced leave in</p> <p>8 the first place?</p> <p>9 A Yes.</p> <p>10 Q Okay. Now, let's go to Frank</p> <p>11 Deposition Exhibit 9. What is Frank Deposition</p> <p>12 Exhibit 9?</p> <p>13 A This is a letter from Comptroller</p> <p>14 stating that she would like to officially withdraw</p> <p>15 her request for forced leave for Mr. Garavaglia.</p> <p>16 Q And it's dated August 28, 2019. Is</p> <p>17 that correct?</p> <p>18 A Yes.</p> <p>19 Q And it looks like Mr. Garavaglia,</p> <p>20 Judy Armstrong, Nancy Kistler were also copied on</p> <p>21 this letter from Comptroller Darlene Green. Is</p> <p>22 that right?</p> <p>23 A Yes.</p> <p>24 Q All right. Let's go to the next</p> <p>25 item, number 10. And what is this item number 10?</p>

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<p>1 A This is a letter from Comptroller</p> <p>2 notifying Mr. Garavaglia that he is being set for a</p> <p>3 pre-termination review.</p> <p>4 Q Okay. And --</p> <p>5 A It says "hearing," pardon me, but</p> <p>6 actually it's a review.</p> <p>7 Q Is the -- the nomenclature is review</p> <p>8 as opposed to hearing; correct?</p> <p>9 A Yes.</p> <p>10 Q And it's dated August 28, 2019. Is</p> <p>11 that correct?</p> <p>12 A Yes.</p> <p>13 Q Now, it lists a number of bases for</p> <p>14 the pre-termination review. And the first one, let</p> <p>15 me read that into the record because I have a few</p> <p>16 questions to ask you about that.</p> <p>17 It says, quote, (Quote as read):</p> <p>18 You have improperly signed multiple</p> <p>19 City contracts and contract</p> <p>20 extensions, including automatic</p> <p>21 extensions without legal</p> <p>22 authorization to do so, putting the</p> <p>23 City at risk, dating back to 2019.</p> <p>24 Do you see that?</p> <p>25 MS. HAMILTON: 2009.</p>	<p>1 improprieties to be ignored in the context of that</p> <p>2 investigation?</p> <p>3 A No.</p> <p>4 Q Why not?</p> <p>5 A Because they're still relevant to the</p> <p>6 overall performance of the employee, you know, in</p> <p>7 his or her position and whether or not they, um,</p> <p>8 you know, are fit for continued service.</p> <p>9 Q Okay. And there are a listing of</p> <p>10 other charges on that page. Is that correct?</p> <p>11 A Yes.</p> <p>12 Q The next page, there is a reference</p> <p>13 to certain provisions of the City of St. Louis</p> <p>14 Department of Personnel, Administrative and Joint</p> <p>15 Regulations, Employee Code of Conduct; you see</p> <p>16 that?</p> <p>17 A Yes.</p> <p>18 Q If we look at the next to last</p> <p>19 paragraph, and I'll read that one into the record,</p> <p>20 it says, quote, (Quote as read):</p> <p>21 The purpose of this pre-termination</p> <p>22 hearing is to allow you the</p> <p>23 opportunity to respond to the</p> <p>24 charges, review any evidence against</p> <p>25 you, present any evidence you have on</p>
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<p>1 Q (BY MR. NORWOOD) I'm sorry, 2009.</p> <p>2 A Yes, I see that.</p> <p>3 Q Dating back to 2009; correct?</p> <p>4 A Yes.</p> <p>5 Q Now, if we unpack that, would the</p> <p>6 improper signing of multiple City contracts and</p> <p>7 contract extensions, would that be a grounds for</p> <p>8 discipline?</p> <p>9 A Yes.</p> <p>10 Q Why?</p> <p>11 A That is a very serious charge under</p> <p>12 both the -- the Code of Ethics and it would be an</p> <p>13 exception to progressive discipline under</p> <p>14 Administrative Regulation 117.</p> <p>15 Q Okay. Does it matter that the --</p> <p>16 that any of the contracts that might be referenced</p> <p>17 here date back to 2009?</p> <p>18 MR. BLANKE: Well, let me object to</p> <p>19 the form of the question as to whether it matters,</p> <p>20 that --</p> <p>21 MR. NORWOOD: Well, let me say -- let</p> <p>22 me withdraw that question, let me withdraw that</p> <p>23 question, and let me ask it another way.</p> <p>24 Q (BY MR. NORWOOD) If an investigation</p> <p>25 determines past improprieties, are those past</p>	<p>1 your behalf, including any mitigating</p> <p>2 circumstances that may be involved.</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q And is that the purpose of that</p> <p>6 process, this pre-termination review?</p> <p>7 A Yes.</p> <p>8 Q And in this case, did Mr. Garavaglia</p> <p>9 have the opportunity to respond to the charges by</p> <p>10 way of this process?</p> <p>11 A Yes.</p> <p>12 Q Do you know if he undertook that</p> <p>13 opportunity?</p> <p>14 A I can't recall.</p> <p>15 Q Okay. Do you recall -- well, strike</p> <p>16 that.</p> <p>17 Do you know what ultimately happened</p> <p>18 to Mr. Jim Garavaglia as it relates to his</p> <p>19 employment with the City of St. Louis?</p> <p>20 A My belief is that he retired.</p> <p>21 Q All right. All right. And -- and</p> <p>22 we'll -- we have some documents and we'll talk</p> <p>23 about that in a minute.</p> <p>24 And so as you sit here today you</p> <p>25 don't know if in fact he took advantage of the</p>

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<p>1 opportunity to respond to the charges, as you sit 2 here today?</p> <p>3 A My recollection is I do not remember 4 seeing a, you know, a summary of a pre-termination 5 review on Mr. Garavaglia.</p> <p>6 Q Okay. And as you sit here today, you 7 don't know if he took advantage of the opportunity 8 to review any evidence that might be presented 9 against him as it was delineated in the charges set 10 forth in -- on page 1.</p> <p>11 A Yeah, I --</p> <p>12 MR. BLANKE: Objection, asked and 13 answered, and leading.</p> <p>14 MS. HAMILTON: You can answer.</p> <p>15 A I can't say with certainty. I don't 16 believe so, but I can't say with certainty.</p> <p>17 Q (BY MR. NORWOOD) Okay. And -- and 18 at the pre-termination review, did Mr. Garavaglia 19 have the right to have counsel there?</p> <p>20 A Yes.</p> <p>21 Q All right. Well, and -- and would 22 that have provided him and his counsel with an 23 opportunity to review that evidence and refute any 24 charges?</p> <p>25 MR. BLANKE: Objection as to the form</p>	<p>1 for the same reasons as set forth 2 above, repeating this conduct for the 3 third separate occasion, 4 necessitating Plaintiff multiple -- 5 I'm sorry, Plaintiff filing multiple 6 appeals to the Civil Service 7 Commission. 8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And then paragraph number 17 says, 11 quote, (Quote as read): 12 The City's director of personnel 13 approved the forced leave each time, 14 knowing that there was no supportable 15 basis for each forced leave decision 16 and/or conspired with Defendant Green 17 to discriminate against Plaintiff as 18 alleged herein. 19 Do you see that?</p> <p>20 A I do.</p> <p>21 Q All right. Did you approve -- let's 22 focus on the first forced leave. July 2, 2019. 23 Did you approve the July 2, 2019, forced leave 24 request with -- without any supportable basis?</p> <p>25 A No, I did not.</p>
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<p>1 of the question regarding the use of the word 2 "would" rather than "should," whether it would or 3 not calls for speculation.</p> <p>4 MS. HAMILTON: You can answer.</p> <p>5 A Yes.</p> <p>6 Q (BY MR. NORWOOD) All right. I want 7 to backtrack a bit, and I hate to jump around, but 8 let's take a look at tab 1. And while you're -- 9 and it's marked Frank Deposition Exhibit 1. And 10 while folks are locating that tab, for the record, 11 that exhibit, Frank Depo Exhibit 1, is a document 12 entitled Second Amended Complaint for Employment 13 Discrimination filed by Mr. James Garavaglia 14 against the City of St. Louis and Darlene Green. 15 Do you see that document?</p> <p>16 A Yes, I do.</p> <p>17 Q All right. And let me direct your 18 attention to paragraph -- I'm sorry. Page 4. Do 19 you have that page, sir?</p> <p>20 A I do.</p> <p>21 Q Okay. And let me read some of the 22 language. Let's start at paragraph 16. 23 It says, quote, (Quote as read): 24 Defendant Green then withdrew 25 Plaintiff's forced leave yet again</p>	<p>1 Q Did you approve the July 2, 2019, 2 forced leave request because you were in some 3 conspiracy with Comptroller Green to discriminate 4 against Plaintiff?</p> <p>5 MR. BLANKE: Let me object, calls for 6 legal conclusions on the part of the witness.</p> <p>7 MS. HAMILTON: You can --</p> <p>8 Q (BY MR. NORWOOD) Well, your 9 understanding of conspiracy. Were you huddling up 10 with Comptroller Green in an effort to discriminate 11 against Mr. Garavaglia based on race, sex, age?</p> <p>12 A No.</p> <p>13 MR. BLANKE: Same objection.</p> <p>14 MR. NORWOOD: I'm sorry?</p> <p>15 MR. BLANKE: Same objection.</p> <p>16 MR. NORWOOD: And I just want to make 17 sure the witness --</p> <p>18 MR. BLANKE: He said no.</p> <p>19 MR. NORWOOD: Well, I to make sure 20 she got that.</p> <p>21 THE WITNESS: I'll slow down.</p> <p>22 MR. NORWOOD: You can say what he 23 said, but let's let him say it again.</p> <p>24 Q (BY MR. NORWOOD) Could you answer 25 that one?</p>

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<p>1 A No.</p> <p>2 Q What's your view of that allegation</p> <p>3 directed to -- against you personally?</p> <p>4 MR. BLANKE: Objection as to</p> <p>5 relevance.</p> <p>6 MS. HAMILTON: You can answer.</p> <p>7 A I only have -- first I had only one</p> <p>8 conversation with Comptroller herself, as I said in</p> <p>9 my original conversation with Judy Armstrong on the</p> <p>10 Saturday before I approved the forced leave. I did</p> <p>11 not speak with Comptroller. I only spoke to</p> <p>12 Comptroller once and that was after this matter,</p> <p>13 you know, had occurred about Mr. Garavaglia.</p> <p>14 And secondly, in terms of conspiracy</p> <p>15 to discriminate, I only met Mr. Garavaglia perhaps</p> <p>16 once. So I had very, very little knowledge of him</p> <p>17 other than he was a nice guy.</p> <p>18 Q (BY MR. NORWOOD) Well, and so did</p> <p>19 you have any reason to conspire against him based</p> <p>20 on his age or sex or race or anything like that?</p> <p>21 A No. I think we're sort of in the</p> <p>22 same group there.</p> <p>23 Q Got it. And for the record, what</p> <p>24 group is that?</p> <p>25 A I'm a white male who is 61 years of</p>	<p>1 salary increase from where he was being</p> <p>2 compensated; is that right?</p> <p>3 A Yes. Or, with the proviso that he</p> <p>4 would also go to the minimum of the range. So this</p> <p>5 was not the case I believe here, but sometimes</p> <p>6 there is such a large gap between pay ranges that</p> <p>7 it might automatically result in a 7 percent, et</p> <p>8 cetera.</p> <p>9 Q Right.</p> <p>10 A But -- but not -- not in this case to</p> <p>11 the best of my recollection.</p> <p>12 Q Okay. So he would have been entitled</p> <p>13 to a 5 percent salary increase; is that right?</p> <p>14 A Yes.</p> <p>15 Q And because of that, why -- well,</p> <p>16 strike that.</p> <p>17 So why would Comptroller Green have</p> <p>18 to send this to you as it relates to his</p> <p>19 compensation?</p> <p>20 MR. BLANKE: Objection, asked and</p> <p>21 answered.</p> <p>22 MS. HAMILTON: You can answer.</p> <p>23 A In our system, the compensation</p> <p>24 ordinance is the legal document that determines how</p> <p>25 we pay all of our civil service employees, and even</p>
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<p>1 age.</p> <p>2 Q Okay. All right. Let's go to tab --</p> <p>3 Exhibit tab 11, Frank Deposition Exhibit 11. Take</p> <p>4 your time, if you could, just take a look at the</p> <p>5 exhibit which, for the record, there are two pages,</p> <p>6 and it's Bates stamped STL000707 on the first page,</p> <p>7 and the second page is STL000708, for the record.</p> <p>8 First of all, what is the first page</p> <p>9 of Frank Depo Exhibit 11?</p> <p>10 A This is a letter from Comptroller</p> <p>11 Green asking me to give a -- to approve, pursuant</p> <p>12 to the compensation ordinance, a non-standard</p> <p>13 increase for Mr. Garavaglia upon his promotion to</p> <p>14 Deputy Comptroller.</p> <p>15 The compensation ordinance provides</p> <p>16 that a person receive a 5 percent normally upon</p> <p>17 promotion; although, the appointing authority can</p> <p>18 ask for approval from the director of personnel to</p> <p>19 grant a higher, non-standard promotional increase</p> <p>20 in certain circumstances.</p> <p>21 Q Okay. Let's unpack that, if we</p> <p>22 could.</p> <p>23 In the normal course, based upon what</p> <p>24 you understood, him being promoted to deputy</p> <p>25 Comptroller would have entitled him to a 5 percent</p>	<p>1 excepted employees, and it gives discretion to the</p> <p>2 director of personnel alone to approve non-standard</p> <p>3 increases.</p> <p>4 Q (BY MR. NORWOOD) Okay. And -- and</p> <p>5 the non-standard, if I'm understanding you, and you</p> <p>6 correct me if I'm wrong, the non-standard increases</p> <p>7 would be the increases beyond the document that</p> <p>8 you've identified; is that correct?</p> <p>9 A Yes, sir.</p> <p>10 Q All right. And do you know why</p> <p>11 Comptroller Green requested a 5 percent salary</p> <p>12 increase above what he would normally be entitled</p> <p>13 to?</p> <p>14 A My understanding was because he was</p> <p>15 moving to such a high level --</p> <p>16 MR. BLANKE: Objection, it's</p> <p>17 non-responsive. The question was whether you know</p> <p>18 why.</p> <p>19 THE WITNESS: Whether I know why?</p> <p>20 MR. NORWOOD: Well, and he was</p> <p>21 answering whether he knew why.</p> <p>22 MS. HAMILTON: You can -- you can</p> <p>23 continue.</p> <p>24 MR. BLANKE: I might object to that</p> <p>25 one.</p>

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<p>1 MS. HAMILTON: He's objecting. You</p> <p>2 can continue.</p> <p>3 A My understanding was that --</p> <p>4 MR. BLANKE: Objection,</p> <p>5 non-responsive. He's not us asking what your</p> <p>6 understanding was.</p> <p>7 MS. HAMILTON: Your objection is</p> <p>8 noted, Counsel. You can answer.</p> <p>9 MR. BLANKE: I understand. I just</p> <p>10 wanted to object to it again.</p> <p>11 A My understanding from -- from the</p> <p>12 Comptroller's office was because he was moving to a</p> <p>13 very high level position.</p> <p>14 Q (BY MR. NORWOOD) Okay. And do you</p> <p>15 know if she was required to add another 5 percent?</p> <p>16 A No.</p> <p>17 Q Do you know why, if Comptroller Green</p> <p>18 was discriminating against him based on his race or</p> <p>19 sex or age, why she would recommend a 5 percent</p> <p>20 increase over and above what he would normally be</p> <p>21 entitled to?</p> <p>22 MR. BLANKE: Objection, not supported</p> <p>23 by the evidence, and calls for speculation.</p> <p>24 MS. HAMILTON: You can answer.</p> <p>25 A No.</p>	<p>1 Q All right. But all of that had to be</p> <p>2 approved by you.</p> <p>3 A Yes.</p> <p>4 Q All right. Let's go to the next page</p> <p>5 of that Frank Depo Exhibit 11 which is a letter --</p> <p>6 it appears to be a letter -- well, strike that.</p> <p>7 What is that page of the exhibit?</p> <p>8 For the record --</p> <p>9 (Overtalking - inaudible.)</p> <p>10 MR. BLANKE: What page are we on?</p> <p>11 MR. NORWOOD: For the record --</p> <p>12 MR. SCHMITZ: You said "the next</p> <p>13 page." What page are you on?</p> <p>14 MS. HAMILTON: We're on 11.</p> <p>15 MR. NORWOOD: The second page of</p> <p>16 Exhibit 11 and the Bates stamp page number, for the</p> <p>17 record, is STL000708.</p> <p>18 MR. BLANKE: So you're one back.</p> <p>19 MS. HAMILTON: No, you're on the</p> <p>20 correct page.</p> <p>21 MR. BLANKE: Oh, okay, sorry.</p> <p>22 A This is my response, sir, to</p> <p>23 Comptroller Green approving her request for a</p> <p>24 non-standard 10 -- approximately 10 percent</p> <p>25 increase for Mr. Garavaglia upon his promotion to</p>
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<p>1 Q (BY MR. NORWOOD) Let's go to the</p> <p>2 next page of Frank Deposition Exhibit 11. What is</p> <p>3 that?</p> <p>4 A This is a letter to Comptroller Green</p> <p>5 from me saying that based upon her recommendation</p> <p>6 and in accordance with the compensation ordinance,</p> <p>7 I am approving her request.</p> <p>8 Q Okay. And just so that my record is</p> <p>9 -- our record is square, the first letter is dated</p> <p>10 May 20, 2016, from Darlene Green to you; is that</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q All right. And is that when he was</p> <p>14 promoted to Deputy Comptroller?</p> <p>15 A Actually, the date I believe, sir,</p> <p>16 says that his promotional date would be as of</p> <p>17 May 13, 2016.</p> <p>18 Q Okay. So -- so would that suggest</p> <p>19 then that he was actually promoted on May 13, 2016?</p> <p>20 A Yes. It would suggest that.</p> <p>21 Q All right. And the request, which</p> <p>22 would have been made May 20, 2016, would have meant</p> <p>23 that his effective salary increase would start as</p> <p>24 of his promotion date. Is that right?</p> <p>25 A Yes.</p>	<p>1 Deputy Comptroller.</p> <p>2 Q (BY MR. NORWOOD) Okay. And for the</p> <p>3 record, the letter is dated June 6, 2016. Is that</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q Okay. Let's read the second</p> <p>7 paragraph of that letter. And before we do that,</p> <p>8 it looks like it was CC'd to Terry -- who is that?</p> <p>9 How do you pronounced that last name?</p> <p>10 A Terry Dabrowski.</p> <p>11 Q Dabrowski, okay. And who is Terry</p> <p>12 Dabrowski?</p> <p>13 A She was the manager of the personnel</p> <p>14 services section of the Department of Personnel.</p> <p>15 She's since passed away.</p> <p>16 Q Okay. Second paragraph says quote,</p> <p>17 (Quote as read):</p> <p>18 Based on your recommendation, please</p> <p>19 be advised that, in accordance with</p> <p>20 Section 6(a)(1), I am hereby</p> <p>21 approving your request.</p> <p>22 Is that right?</p> <p>23 A Yes.</p> <p>24 Q And so you did approve the request;</p> <p>25 right?</p>

18 (Pages 69 to 72)

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<p>1 A Yes.</p> <p>2 Q All right. And then it goes further</p> <p>3 and says, quote, (Quote as read):</p> <p>4 Therefore, upon Mr. Garavaglia's</p> <p>5 appointment to the position of Deputy</p> <p>6 Comptroller, in parens it has</p> <p>7 (01488-21M-1).</p> <p>8 What is that number?</p> <p>9 A That number refers to his actual</p> <p>10 position and pay grade, the M meaning that he is a</p> <p>11 management person, the 1 meaning that he's excluded</p> <p>12 from overtime provisions of the FLSA.</p> <p>13 Q Okay. And continuing on, it says,</p> <p>14 (Quote as read):</p> <p>15 His salary shall be \$4,867 biweekly</p> <p>16 (step 15), approximately 10 percent.</p> <p>17 Is that correct?</p> <p>18 A Yes.</p> <p>19 Q What is step 15? What does that</p> <p>20 mean?</p> <p>21 A There are 30 steps in the current</p> <p>22 compensation ordinance. Each step is approximately</p> <p>23 1.5 percent higher than the next, and so in order</p> <p>24 to make sure that the payroll office and the</p> <p>25 Comptroller's office, we set a salary correctly, we</p>	<p>1 Q (BY MR. NORWOOD) Okay. Mr. Frank, I</p> <p>2 believe you indicated that you wanted to clarify</p> <p>3 the record about the call you had with Judy</p> <p>4 Armstrong as it related to the first forced leave?</p> <p>5 You wanted to clarify something on that point?</p> <p>6 A Yes, thank you. Um, I indicated</p> <p>7 that, um, that -- and I did not speak to the</p> <p>8 Comptroller directly. I believe that Judy was the</p> <p>9 only person that I -- I spoke to other than Chana,</p> <p>10 who made the connection of -- of the phone for me.</p> <p>11 So I thought -- I thought that they</p> <p>12 said Beth was on the line. I did not speak to her</p> <p>13 but I'm not sure. So I just wanted to be clear</p> <p>14 about that. I'm sorry.</p> <p>15 Q Okay. Thank you, sir, for clarifying</p> <p>16 that.</p> <p>17 Who appointed you to your position as</p> <p>18 director of personnel for the City of St. Louis?</p> <p>19 A Former Mayor Slay, Francis Slay.</p> <p>20 Q Okay. Do you know if -- if Ms. Green</p> <p>21 had any role in that process?</p> <p>22 A No, she did not.</p> <p>23 Q Have there been occasions where</p> <p>24 personnel-related requests have come from the</p> <p>25 Comptroller's office to your office that you</p>
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<p>1 put in the exact step and pay for their information</p> <p>2 when we make such approvals.</p> <p>3 Q Okay. Did you have to approve this</p> <p>4 request?</p> <p>5 A Pardon me?</p> <p>6 Q Did you have to approve this request?</p> <p>7 A No, it's discretionary.</p> <p>8 Q Okay. And why did you approve this</p> <p>9 request?</p> <p>10 A Based upon the recommendation of my</p> <p>11 classification compensation section, as well as my</p> <p>12 personal review of his movement to such a high</p> <p>13 level position, I felt it warranted a non-standard</p> <p>14 increase.</p> <p>15 Q And his supervisor was recommending</p> <p>16 it. Was that a factor as well?</p> <p>17 A Absolutely.</p> <p>18 Q Okay. Let's go to the next -- well,</p> <p>19 why don't we take a short break, if we could, if</p> <p>20 that's okay?</p> <p>21 THE VIDEOGRAPHER: Time is 11:12 AM,</p> <p>22 we are off the record.</p> <p>23 (Off the record.)</p> <p>24 THE VIDEOGRAPHER: The time is 11:41,</p> <p>25 we are back on the record.</p>	<p>1 denied?</p> <p>2 A Yes.</p> <p>3 Q What -- what type of -- obviously</p> <p>4 without specifying the particular personnel, but</p> <p>5 what kind of requests do you recall --</p> <p>6 A They were --</p> <p>7 Q -- denying coming from the</p> <p>8 Comptroller's office?</p> <p>9 A I remember requests for non-standard</p> <p>10 promotional increases. I remember requests for</p> <p>11 special performance increases, and I also remember</p> <p>12 requests for developing new job classes, and I</p> <p>13 remember requests for reclassifications. All of</p> <p>14 which, from time to time, I've denied.</p> <p>15 Q And why -- without getting specific,</p> <p>16 why did you deny those various requests from the</p> <p>17 Comptroller's office?</p> <p>18 A Because those requests did not have</p> <p>19 merit based on my assessment and the</p> <p>20 recommendations of my classification and</p> <p>21 compensation unit.</p> <p>22 Q Okay. So if anyone were to suggest</p> <p>23 that you were a rubber stamp for the Comptroller's</p> <p>24 office, would there be any truth to that?</p> <p>25 A None.</p>

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<p>1 Q All right. Let's turn to Frank Depo</p> <p>2 Exhibit 12, if we could? What is Frank Depo</p> <p>3 Exhibit 12? Well, strike that.</p> <p>4 For the record, Frank Deposition</p> <p>5 Exhibit 12 consists of multiple pages that are</p> <p>6 Bates stamped, the first is STL000698. The next</p> <p>7 one is STL000689. The next one is STL000687. And</p> <p>8 the next one is STL000678.</p> <p>9 So let's start with the first page of</p> <p>10 Frank Deposition Exhibit 12, which is the</p> <p>11 STL000698. What is that document?</p> <p>12 A That's the Employee Status Form,</p> <p>13 and what this documents is the promotion of</p> <p>14 Mr. Garavaglia to Deputy Comptroller with the</p> <p>15 increase in salary.</p> <p>16 Q Is this 10 percent -- it says "Reason</p> <p>17 For Data Change," and in parentheses it says "(10</p> <p>18 percent increase 'salary adjustment')." "</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And that's -- is that salary</p> <p>22 adjustment the additional 5 percent on what he</p> <p>23 normally would have been entitled to?</p> <p>24 A Yes.</p> <p>25 Q All right. Let's go to the next page</p>	<p>1 a service rating in which the employee is rated as</p> <p>2 overall unsuccessful, in which case they, you know,</p> <p>3 do not receive that merit increase.</p> <p>4 Q Okay. But where does the step part</p> <p>5 fit into the mix?</p> <p>6 A The step increase just indicates that</p> <p>7 it's the normal annual increase. We have 30 steps</p> <p>8 in our system. Actually there are some more at the</p> <p>9 end now because of -- of our new pay study, but</p> <p>10 current compensation ordinance has 30 steps and</p> <p>11 each step is 1.5 percent.</p> <p>12 So unless an employee were granted --</p> <p>13 the appointing authority asked me for a special</p> <p>14 performance increase and it were granted, it would</p> <p>15 just be called the step increase, which is 1.5</p> <p>16 percent.</p> <p>17 Q And that's the standard annual</p> <p>18 increase?</p> <p>19 A It's -- it has been standard, except</p> <p>20 the last few years it was 3 percent.</p> <p>21 Q Instead of the 1.5?</p> <p>22 A Yes.</p> <p>23 Q How long was it 1.5, do you recall?</p> <p>24 A Oh, gosh. Maybe 2016, '17? I'm not</p> <p>25 sure. We negotiated with the unions. We used to</p>
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<p>1 of that exhibit which is STL000689. And that's a</p> <p>2 similar form which is the form, just for the</p> <p>3 record, it says Employee Status Form. Is that the</p> <p>4 form we were talking about?</p> <p>5 A Yes.</p> <p>6 Q And this particular Employee Status</p> <p>7 Form is for Mr. Garavaglia. Is that correct?</p> <p>8 A Yes.</p> <p>9 Q And it's dated 6/15/17. Is that</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q And do you know what the purpose of</p> <p>13 this particular form was for?</p> <p>14 A Yes. This is to process the</p> <p>15 employee's annual increase.</p> <p>16 Q Okay. And for the record, it says</p> <p>17 "Reason For Data Change," it says "Merit," and then</p> <p>18 in parentheses it has "(Step) increase."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And what does that mean?</p> <p>22 A What that means, we are a merit</p> <p>23 system, and so employees automatically would get</p> <p>24 their annual increase, which we call a merit</p> <p>25 increase, unless their appointing authority submits</p>	<p>1 have open ranges and they weren't working, so we</p> <p>2 negotiated 30 steps and each step had about a 1.5</p> <p>3 percent in between them except the trades.</p> <p>4 The trades, because they had an</p> <p>5 expanded range, received a larger one in step 30.</p> <p>6 But for all other employees it was about 1.5</p> <p>7 percent, excluding police and fire that had</p> <p>8 separate, they have a separate type of -- of pay</p> <p>9 matrix.</p> <p>10 Q Okay. And then let's go to the next</p> <p>11 page, which, for the record, is the Employee Status</p> <p>12 Form and it looks like it was completed 6/20/18?</p> <p>13 A Yes, sir.</p> <p>14 Q Is that right?</p> <p>15 A Yes, sir.</p> <p>16 Q And is that for Mr. Garavaglia?</p> <p>17 A Yes, sir.</p> <p>18 Q And does this reflect a "Merit (Step)</p> <p>19 increase" as well?</p> <p>20 A Yes.</p> <p>21 Q That would have been the standard 1.5</p> <p>22 percent increase?</p> <p>23 A Yes, I believe in 2018 it was still.</p> <p>24 Q Yep.</p> <p>25 A Right.</p>

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<p>1 Q Let's go to the next page, STL000678.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And is that an Employee Status Form</p> <p>5 for Mr. Garavaglia?</p> <p>6 A Yes, it is.</p> <p>7 Q And the "Reason For Data Change," it</p> <p>8 says "Retired effective 10/1/19." Is that correct?</p> <p>9 A Yes.</p> <p>10 Q All right. Let's turn to the next</p> <p>11 document, which is Frank Depo Exhibit 13. And for</p> <p>12 the record, it is a group exhibit which appears to</p> <p>13 have consecutively numbered pages starting with</p> <p>14 STL001373 through STL001408.</p> <p>15 I'm going to direct your attention to</p> <p>16 -- it is five pages in, and the bottom is Bates</p> <p>17 stamped page STL001377. Do you have that page in</p> <p>18 front of you?</p> <p>19 A I do. I do.</p> <p>20 Q Okay. What is that page?</p> <p>21 A This is the page that is generated by</p> <p>22 the Board of Trustees of the Employees Retirement</p> <p>23 System document and the Award of Pension Allowance.</p> <p>24 Q Maybe it'd be better to come back to</p> <p>25 that page. Let's skip down to STL001405, if we</p>	<p>1 Q -- "2019"?</p> <p>2 A Yes.</p> <p>3 Q And would that reflect, then, the</p> <p>4 date that he elected to take retirement?</p> <p>5 A Yes.</p> <p>6 Q All right. And for the record,</p> <p>7 August 30 of 2019 would have been two days after</p> <p>8 the notice of pre-termination; do you recall the</p> <p>9 letter dated August 28, 2019 --</p> <p>10 A I remember seeing it. I'd have to go</p> <p>11 back to the --</p> <p>12 Q All right. Let's go back to that</p> <p>13 exhibit which is --</p> <p>14 A Yes.</p> <p>15 Q -- Exhibit --</p> <p>16 A 10.</p> <p>17 Q -- 9 and 10 --</p> <p>18 A Yes.</p> <p>19 Q -- 10 being the termination notice?</p> <p>20 A Yes, I have it, sir.</p> <p>21 Q So it looks like two days after the</p> <p>22 pre-termination notice was, says "Hand-Delivered"</p> <p>23 to Mr. Garavaglia, he elected to retire. Is that</p> <p>24 what it appears, based on these records?</p> <p>25 A Yes, it does.</p>
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<p>1 could. Do you have that page in front of you?</p> <p>2 A Not yet. I'm -- I'm getting there,</p> <p>3 sorry.</p> <p>4 Q Yeah, 1405.</p> <p>5 A Is this it? I -- I think I got it.</p> <p>6 Thank you.</p> <p>7 Q Okay. What is that page?</p> <p>8 A This is the elect -- the form which</p> <p>9 is generated by the Employees Retirement office and</p> <p>10 it elects about -- it's the election of what type</p> <p>11 of retirement you wish to take.</p> <p>12 Q Okay. And in this case, what does it</p> <p>13 show?</p> <p>14 A It indicates that he was taking</p> <p>15 normal retirement --</p> <p>16 Q "He" who?</p> <p>17 A Mr. Garavaglia.</p> <p>18 Q Thank you.</p> <p>19 A -- effective 10/1/19.</p> <p>20 Q And when did Mr. Garavaglia make that</p> <p>21 request? In the middle of the document it says</p> <p>22 "Request made" --</p> <p>23 A It's --</p> <p>24 Q -- "this 30th day of August" --</p> <p>25 A "August."</p>	<p>1 Q And it -- and a -- and going back to</p> <p>2 Exhibit 10, there was a pre-termination -- it says</p> <p>3 hearing but we talked about a different term, your</p> <p>4 term was review, was set for September 12, 2019, at</p> <p>5 9 AM. Is that right?</p> <p>6 A Yep.</p> <p>7 Q Per Frank Depo Exhibit 10?</p> <p>8 A Yes.</p> <p>9 Q All right. So, and that was the</p> <p>10 opportunity for him to present evidence, have his</p> <p>11 lawyer present, et cetera. Is that right?</p> <p>12 A Yes.</p> <p>13 Q All right. But instead, two days</p> <p>14 later he submitted retirement papers?</p> <p>15 A Yes.</p> <p>16 Q Then let's go back to five pages into</p> <p>17 Exhibit 13, which was the Award of Pension</p> <p>18 Allowance. Sorry to have you jumping around.</p> <p>19 A Oh, that's okay. I have it.</p> <p>20 Q Okay. And -- and who -- who submits</p> <p>21 this document?</p> <p>22 A This document is submitted to the</p> <p>23 Board of Trustees by Denise Droege, or whoever is</p> <p>24 occupying the position of manager of the Employees</p> <p>25 Retirement System, who reports directly to the</p>

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<p>1 director of personnel.</p> <p>2 Q Okay. And so is this -- was this</p> <p>3 particular document, STL0001370 -- 1377 issued --</p> <p>4 triggered based upon the request to retire by</p> <p>5 Mr. Garavaglia?</p> <p>6 A Yes.</p> <p>7 Q All right. And it talks about the</p> <p>8 "Date Request Filed" of "August 30, 2019." Is that</p> <p>9 right?</p> <p>10 A Yes.</p> <p>11 Q And it talks about -- well, what else</p> <p>12 -- what else is included in here?</p> <p>13 A It talks about the person's credible</p> <p>14 years of service. It talks about the period of</p> <p>15 service, what their title is, their date of birth,</p> <p>16 what their, um, I think I said final average</p> <p>17 compensation, and then it also includes what the</p> <p>18 anticipated final average -- I'm sorry, the pension</p> <p>19 allowance is, you know, prior to taxes.</p> <p>20 Q Okay. And let's go to STL0001407,</p> <p>21 which is second from the back. That makes it</p> <p>22 easier to find.</p> <p>23 A Okay. Yeah.</p> <p>24 Q Are you there?</p> <p>25 A I am, thank you.</p>	<p>1 age, or sex?</p> <p>2 A Yes.</p> <p>3 Q What is that process?</p> <p>4 A It's covered under Administrative</p> <p>5 Regulation 51, which is -- pardon me. Pardon me.</p> <p>6 It's covered by -- I believe it's Administrative</p> <p>7 Regulation 103 which is the policy against Title</p> <p>8 VII type of -- of violations, and it instructs the</p> <p>9 employee that they can either go to their diversity</p> <p>10 counselor in their own department, or they can go</p> <p>11 to their appointing authority, or they can come</p> <p>12 directly to the employee relations section and</p> <p>13 speak in confidence to, you know, a member of the</p> <p>14 department personnel staff.</p> <p>15 Q Okay. And that would be a</p> <p>16 confidential communication; is that right?</p> <p>17 A Yes.</p> <p>18 Q All right. Do you know if James</p> <p>19 Garavaglia ever pursued any claim of discrimination</p> <p>20 against Comptroller Darlene Green, or anyone else,</p> <p>21 based upon race, age, or sex discrimination</p> <p>22 allegations?</p> <p>23 A I'm unaware myself of any.</p> <p>24 Q Okay. And while you were there, had</p> <p>25 you received anything along those lines?</p>
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<p>1 Q And for the record, it is a document</p> <p>2 that has a heading, Acknowledgment of Retirement</p> <p>3 Pension Laws, Rules, Regulations and Policies.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q What is that?</p> <p>7 A This is something that's a notice</p> <p>8 that is required to be signed by anyone who is</p> <p>9 applying for retirement through the Employees</p> <p>10 Retirement System.</p> <p>11 Q Okay. And for this particular</p> <p>12 document, STL001407, is that signed and</p> <p>13 acknowledged by Mr. James Garavaglia?</p> <p>14 A Yes, it is.</p> <p>15 Q And is dated 8/30/19; is that right?</p> <p>16 A Yes. That's correct.</p> <p>17 Q And that's him essentially</p> <p>18 acknowledging the retirement pension laws, rules,</p> <p>19 regulations, and policies; is that right?</p> <p>20 A Yes.</p> <p>21 Q Okay. Is there a process in the</p> <p>22 City, at least when you were there as director of</p> <p>23 personnel, is there a process by which a person can</p> <p>24 pursue a grievance if that person believes he or</p> <p>25 she has been discriminated against based upon race,</p>	<p>1 A No.</p> <p>2 Q If there were such a thing, would you</p> <p>3 have been made aware of it?</p> <p>4 A Possibly.</p> <p>5 Q Okay.</p> <p>6 A It's -- I would say, you know, the</p> <p>7 person may just want to come in and explore their</p> <p>8 options with the employee relations section but not</p> <p>9 actually pursue something.</p> <p>10 Q Okay.</p> <p>11 A So in that case I wouldn't have been</p> <p>12 informed necessarily.</p> <p>13 Q Well, what if that person who made</p> <p>14 the allegation decided to pursue something? Would</p> <p>15 that come to your -- to your attention?</p> <p>16 A Yes.</p> <p>17 Q All right. And to your knowledge,</p> <p>18 nothing from Mr. Garavaglia came to your attention</p> <p>19 related to suggestions of discrimination based upon</p> <p>20 race, age, or sex. Is that correct?</p> <p>21 A Correct.</p> <p>22 MS. HAMILTON: And you're referring</p> <p>23 to Administrative Regulation 103, the internal</p> <p>24 process; correct?</p> <p>25 MR. NORWOOD: Yes. In terms of pro</p>

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<p>1 -- procedures, whatever is set forth in that --</p> <p>2 A Correct.</p> <p>3 MR. NORWOOD: -- administrative</p> <p>4 regulation for discrimination allegations.</p> <p>5 A You're correct. I'm not referring to</p> <p>6 any complaints with MCHR or EEOC.</p> <p>7 Q (BY MR. NORWOOD) Okay. We're</p> <p>8 talking internal complaints.</p> <p>9 A Yes.</p> <p>10 Q All right. And if such a complaint</p> <p>11 were made, how does that process go?</p> <p>12 A That complaint --</p> <p>13 MR. BLANKE: Let me object as to</p> <p>14 relevance, but go ahead.</p> <p>15 MS. HAMILTON: You can answer.</p> <p>16 A The employee relations section would</p> <p>17 -- the manager would, either herself or himself or</p> <p>18 one of the staff members, meet with the person and</p> <p>19 do a thorough investigation. And when I say</p> <p>20 thorough, it is. It's documented and then it is</p> <p>21 presented to the director of personnel for his or</p> <p>22 her personal review and approval of the report, and</p> <p>23 then the findings are related both back to -- or</p> <p>24 back to both the appointing authority as well as</p> <p>25 the employee.</p>	<p>1 special interim rating that occurs if a person's</p> <p>2 performance dramatically increases or decreases</p> <p>3 during the annual period of time.</p> <p>4 Q And who submits those ratings on</p> <p>5 behalf of an employee?</p> <p>6 A The appointing authority.</p> <p>7 Q Okay. Who actually performs the</p> <p>8 ratings for a particular employee?</p> <p>9 A The employee's supervisor typically</p> <p>10 will do them, but they need to be signed off by the</p> <p>11 appointing authority --</p> <p>12 Q By the appointing --</p> <p>13 A -- or -- or the appointing authority</p> <p>14 designee has the right to do that in many</p> <p>15 instances.</p> <p>16 Q Okay. Do all supervisors provide</p> <p>17 ratings for employees?</p> <p>18 A No, they do not.</p> <p>19 Q Is that fairly common in the City of</p> <p>20 St. Louis?</p> <p>21 A Yes.</p> <p>22 MR. BLANKE: I'm sorry, I was going</p> <p>23 to object as to vagueness, because is what fairly</p> <p>24 common? Doing it or not doing it? You said is it</p> <p>25 fairly common.</p>
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<p>1 Q (BY MR. NORWOOD) And are there any</p> <p>2 next steps beyond that, assuming there's a finding</p> <p>3 of discrimination?</p> <p>4 A If there's a finding of</p> <p>5 discrimination, then the employee relations section</p> <p>6 typically would include suggested remedial steps to</p> <p>7 ameliorate the situation.</p> <p>8 Q And to your knowledge, none of that</p> <p>9 happened as related to Mr. James Garavaglia; is</p> <p>10 that correct?</p> <p>11 A That's correct.</p> <p>12 Q What is an employee rating?</p> <p>13 A An employee rating is part of the</p> <p>14 larger City civil service employee rating process,</p> <p>15 it's approved by the Civil Service Commission, and</p> <p>16 it's either an annual rating, which is done on</p> <p>17 those dates we discussed before, which determines</p> <p>18 whether or not the employee is eligible for the</p> <p>19 annual merit slash step increase, or there can be a</p> <p>20 probationary rating, which is their initial working</p> <p>21 test period, one that typically occurs after six</p> <p>22 months, it can be extended by -- with the approval</p> <p>23 of the director of personnel an additional five</p> <p>24 months.</p> <p>25 And then lastly, there might be a</p>	<p>1 MR. NORWOOD: Fair enough.</p> <p>2 Q (BY MR. NORWOOD) Is not submitting</p> <p>3 an employee rating fairly common in the City?</p> <p>4 A Oh. Oh, yes.</p> <p>5 Q And I believe you may have touched on</p> <p>6 this before, so, but if an employee is not rated,</p> <p>7 does that mean they would automatically receive</p> <p>8 that step increase you talked about?</p> <p>9 A If an employee is not rated, their</p> <p>10 last rating on record in their file is the one that</p> <p>11 prevails. So if it was successful, or highly</p> <p>12 successful, then yes, they would -- they would</p> <p>13 still receive that increase.</p> <p>14 Q Okay. Did Mr. James Garavaglia ever</p> <p>15 come to you and complain to you that he did not</p> <p>16 receive a rating as Deputy Comptroller?</p> <p>17 A No.</p> <p>18 Q Did -- and we saw that, from the</p> <p>19 forms we looked at in '17 and '18, he received that</p> <p>20 merit step increase those two years, '17 and '18?</p> <p>21 A Yes.</p> <p>22 Q Now, let's talk about part-time</p> <p>23 employment as it relates to retirees. How does</p> <p>24 that work? When someone retires, how does one go</p> <p>25 about working part-time with the City?</p>

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<p style="text-align: right;">Page 93</p> <p>1 A A person who wants to work part-time 2 with -- with the City, who is retired, you know, is 3 -- is eligible to request reemployment papers. And 4 many employees do. And they have to complete those 5 retirement -- or reemployment papers, and they are 6 then sent to the personnel services section of the 7 Department of Personnel, and in the vast majority 8 of instances, you know, those -- those requests are 9 approved, provided, however, that the employee does 10 not have, you know, a -- a work history of 11 documented, you know, repeat disciplinary problems, 12 et cetera.</p> <p>13 Q Okay. In the case of Mr. James 14 Garavaglia, are you aware of him submitting any 15 request to work part-time after his retirement from 16 the City of St. Louis?</p> <p>17 A I'm not personally aware, no.</p> <p>18 Q Okay. Do you know if, in the case of 19 Mr. James Garavaglia, whether or not, if he applied 20 for reemployment as a part-time employee following 21 retirement, whether or not he had to work for the 22 Comptroller's office?</p> <p>23 A I have no knowledge of that.</p> <p>24 Q Okay. Well, let me ask it this way. 25 Do you know if there were other departments he</p>	<p style="text-align: right;">Page 95</p> <p>1 prohibition.</p> <p>2 Q And it's just a matter of filling out 3 an application and submitting that to personnel; is 4 that right?</p> <p>5 A That's correct.</p> <p>6 MR. NORWOOD: I think I may be done. 7 Let me just take a moment here.</p> <p>8 Okay. I think at this moment I am 9 done. I don't know if other counsel have 10 questions.</p> <p>11 MR. BLANKE: Oh, I have lots of 12 questions, but can we eat?</p> <p>13 MR. NORWOOD: If the food's here. I 14 mean, I don't have any control of that. So you're 15 saying you want to see if we can take a lunch 16 break?</p> <p>17 MR. BLANKE: If -- yeah.</p> <p>18 MR. NORWOOD: Could you check, Joy, 19 just to -- just to see, and why don't we go off the 20 record for a minute while we --</p> <p>21 THE VIDEOGRAPHER: Time is 12:08, we 22 are off the record.</p> <p>23 (Off the record.)</p> <p>24 THE VIDEOGRAPHER: The time is 1:05 25 PM, we are back on the record.</p>
<p style="text-align: right;">Page 94</p> <p>1 could have applied to work in other than the 2 Comptroller's office?</p> <p>3 A Yes.</p> <p>4 Q Okay. And you talked about some 5 thirty-some-odd departments within the City. 6 Correct?</p> <p>7 A Yes.</p> <p>8 Q So do you know if Mr. Garavaglia 9 could have applied to work part-time for the City 10 of St. Louis in a department other than the 11 Comptroller's office and actually worked in that 12 department?</p> <p>13 A Yes.</p> <p>14 Q Okay. Do you know if there was any 15 prohibition against him doing that today?</p> <p>16 A No.</p> <p>17 Q Okay. Well, doing that at the time 18 you retired, you were not aware any of prohibition 19 against him applying and working part-time either 20 at the Comptroller's office or some other 21 department in the City. Correct?</p> <p>22 A No.</p> <p>23 Q Correct, meaning you're not aware any 24 of prohibition; is that right?</p> <p>25 A No. I'm not aware of any</p>	<p style="text-align: right;">Page 96</p> <p>1 EXAMINATION 2 QUESTIONS BY MR. BLANKE:</p> <p>3 Q So, Mr. Frank, my name is Richard 4 Blanke, I represent the Plaintiff, Jim Garavaglia. 5 And if you don't understand any questions that I 6 ask you, either because you didn't hear it or 7 because you don't understand it, will you please 8 say that so I can try to rephrase it if I can?</p> <p>9 A Yes.</p> <p>10 Q Okay. Since the date your retirement 11 became effective -- which I think was January 1 of 12 2022?</p> <p>13 A Yes.</p> <p>14 Q -- have you been doing any consulting 15 work for the City, or any other kind of services 16 for the City?</p> <p>17 A No.</p> <p>18 Q Do you plan to?</p> <p>19 A No.</p> <p>20 Q Okay. Um --</p> <p>21 MR. NORWOOD: That was three pages --</p> <p>22 MR. BLANKE: What's that?</p> <p>23 MR. NORWOOD: No, I said that was 24 three pages worth right there.</p> <p>25 MR. BLANKE: True. Don't be too</p>

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<p>1 encouraged.</p> <p>2 Q (BY MR. BLANKE) Okay. Now, you --</p> <p>3 you indicated on direct examination by Mr. Norwood</p> <p>4 that once an employee is placed on forced leave,</p> <p>5 they are usually removed or escorted off the</p> <p>6 premises of the work site at the time they're</p> <p>7 notified of the forced leave, I believe is what you</p> <p>8 said.</p> <p>9 A Yes.</p> <p>10 Q Okay. My first question, is that</p> <p>11 always the case?</p> <p>12 A I couldn't testify to always because</p> <p>13 it could happen and I wouldn't be aware of it.</p> <p>14 Q The second question is, you know, my</p> <p>15 understanding is, is that the appointing authority,</p> <p>16 or the designee, makes a request to your office</p> <p>17 that -- for the forced leave, and then you approve</p> <p>18 it, and that could be a day or two or something</p> <p>19 like that, and they have some time limit within</p> <p>20 which to do that; right?</p> <p>21 A Yes, 72 hours.</p> <p>22 Q So the question is, do they get</p> <p>23 removed from the premises after the decision is</p> <p>24 made by the appointing authority to put them on</p> <p>25 forced leave, or after you approve the decision?</p>	<p>1 There was another example in the</p> <p>2 police division where a person was charged with --</p> <p>3 with an alcohol violation when they were driving,</p> <p>4 and they were -- the forced leave was rescinded and</p> <p>5 they were allowed to come back to desk duty but</p> <p>6 then IED uncovered other incidents that occurred</p> <p>7 during the investigation. And so the -- they</p> <p>8 requested forced leave for the employee again.</p> <p>9 Those are two that come to mind</p> <p>10 immediately.</p> <p>11 Q Okay. You also testified in direct</p> <p>12 that -- direct examination that if there are</p> <p>13 additional allegations unearthed by the</p> <p>14 investigation, that they should be and usually are</p> <p>15 considered in the determination as to whether</p> <p>16 forced leave would continue or be reinstated if it</p> <p>17 had been withdrawn earlier; correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. Is there -- is there any</p> <p>20 limitations regarding the scope of what these</p> <p>21 additional allegations would be that would justify</p> <p>22 reinstatement of a forced leave? Like the two</p> <p>23 examples you just gave.</p> <p>24 I mean, the two examples you just</p> <p>25 gave were when additional allegations unearthed</p>
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<p>1 A After the appointing authority makes</p> <p>2 the decision to initially place them on forced</p> <p>3 leave.</p> <p>4 Q And that happens before you approve</p> <p>5 the decision?</p> <p>6 A Yes.</p> <p>7 Q Okay. You said that rescinding or</p> <p>8 withdrawing a forced leave and then reinstating a</p> <p>9 forced leave thereafter was unusual, but that you</p> <p>10 knew that it did occur on certain times --</p> <p>11 A Yes.</p> <p>12 Q -- or has occurred; correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. How unusual?</p> <p>15 A I can only recall it happening --</p> <p>16 happening a handful of times.</p> <p>17 Q Okay. Do you remember those specific</p> <p>18 occasions?</p> <p>19 A One was an occasion in the forestry</p> <p>20 department, I may have alluded to it, but when an</p> <p>21 employee originally made a -- a threatening remark</p> <p>22 and was immediately returned because we didn't</p> <p>23 think that it felt -- it really met that the -- the</p> <p>24 threshold for forced leave, but then immediately</p> <p>25 upon returning, made physical contact.</p>	<p>1 after the forced leave was withdrawn; correct?</p> <p>2 A Yes.</p> <p>3 Q So, you know, if there were</p> <p>4 additional allegations unearthed of misconduct or</p> <p>5 alleged misconduct that occurred nine years earlier</p> <p>6 or thereabouts, would that justify a reinstatement</p> <p>7 of forced leave alone?</p> <p>8 A It depends on the nature of the</p> <p>9 violations.</p> <p>10 Q Right.</p> <p>11 A You know, typically if it were a</p> <p>12 violation that were something as simple as being 15</p> <p>13 minutes late to work on an attendance sheet,</p> <p>14 perhaps not. But if it was a violation of sexual</p> <p>15 harassment, yes. So it really depends on the</p> <p>16 nature of the prior allegations -- or I mean of the</p> <p>17 prior incidents which led to additional violations.</p> <p>18 Q And what about the length of time,</p> <p>19 how far back it goes? Does that factor into it as</p> <p>20 well, or no?</p> <p>21 A It would, again, depending on --</p> <p>22 there's no hard, fast rule about that, but one</p> <p>23 would have to exercise discretion depending on the</p> <p>24 severity of the allegations.</p> <p>25 Q Okay. Now, here, with regard to</p>

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<p>1 Mr. Garavaglia, when Comptroller Green withdrew her 2 first request for forced leave, she asked that 3 forced leave be reinstated within days; correct? 4 A Yes, that's my recollection. 5 Q And there was no additional 6 allegations brought to your attention at that time. 7 MR. NORWOOD: Well, let me object 8 because that assumes facts not in evidence. 9 Subject to that. 10 A No, no additional allegations were 11 made known to me. 12 Q (BY MR. BLANKE) Right. 13 A She was -- 14 Q That's all you can say. 15 A Yeah. 16 Q And then the second time, it was 17 actually the very same day or the day after that 18 she reinstated the forced leave; is that correct? 19 A That's correct. 20 Q And again, there are no additional 21 allegations that came to you that occurred during 22 that time period; is that correct? 23 A Not to me as director of personnel, 24 no. 25 Q And why would -- why would it be</p>	<p>1 Is -- is that how you know about it? 2 A I know about it through conversations 3 with Deputy City Counselor Nancy Kistler who 4 informed me -- 5 MS. HAMILTON: Objection -- 6 Q (BY MR. BLANKE) That's where you got 7 to stop. 8 MS. HAMILTON: -- I'll stop you and 9 ask you not to go into a privileged conversation 10 with counsel. 11 THE WITNESS: Okay. Thank you. 12 Q (BY MR. BLANKE) We'll get into this 13 in a minute but -- in more detail, but just do you 14 recall, before we get into it, that the original 15 forced leave was withdrawn and reinstated a very 16 short time before the hearing was scheduled? 17 A No, I don't -- I don't recollect 18 that. 19 Q Do you recall the second time that 20 the forced leave was withdrawn, that it was 21 withdrawn one day -- or several days before the -- 22 before the hearing was scheduled? 23 MR. NORWOOD: Let me object in terms 24 of vague and ambiguous with respect to "the 25 hearing."</p>
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<p>1 necessary to withdraw a forced leave request and 2 then file another one? Why couldn't it just be 3 extended? 4 MS. HAMILTON: And I would object 5 that that calls for speculation, but to the extent 6 you can answer on behalf of Defendant Green, you 7 may. 8 MR. NORWOOD: And let me also object 9 because I think it's a compound question, but 10 subject to that. 11 MS. HAMILTON: And you're asking him 12 what Defendant Green's opinion in this question? 13 MR. BLANKE: No. I'm just saying in 14 general. 15 A I was advised that it was done at the 16 recommendation of Deputy City Counselor Nancy 17 Kistler is -- 18 Q (BY MR. BLANKE) And that's all -- 19 that's -- that's all you know about it? I mean is 20 that -- my question is this. 21 MS. HAMILTON: You can answer yes or 22 no. 23 Q (BY MR. BLANKE) Is -- is that 24 enough? Apparently it was enough if -- strike all 25 of that.</p>	<p>1 MR. BLANKE: The -- good -- good 2 objection. I'll rephrase the question. 3 Q (BY MR. BLANKE) Do you recall when 4 the second forced leave request was withdrawn, that 5 that occurred within days of the scheduled hearing 6 before the Civil Service Commission on the second 7 forced leave? 8 A I know that there was some proximity. 9 I don't recall the direct amount of time -- or the 10 actual amount of time in terms of days, no. 11 Q Do you recall even looking at that as 12 a factor in deciding whether to approve it? 13 A No, because receiving -- or I mean, 14 excuse me. Rescinding a forced leave request is 15 not discretionary with the director, that's with 16 the appointing authority. 17 Q That answers a question I haven't 18 asked you yet but was going to. 19 So in terms of reinstating a forced 20 leave request, you've already testified that there 21 was no additional allegations brought to your 22 attention. So why did you improve it? 23 MR. NORWOOD: Did you say improve it 24 or approve it? 25 MR. BLANKE: Approve it. I'm sorry.</p>

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<p>1 MR. NORWOOD: Okay.</p> <p>2 A The original request for forced leave</p> <p>3 lacked the specific language that was discussed</p> <p>4 with me during the conversation with Judy</p> <p>5 Armstrong, which was the -- just a couple of words</p> <p>6 about serious financial issues which was presented</p> <p>7 to me. And so when it was asked to be rescinded</p> <p>8 and reinstated, you know, with said language, you</p> <p>9 know, I approved it.</p> <p>10 Q (BY MR. BLANKE) On that basis alone?</p> <p>11 A Yeah -- on the basis of that as well</p> <p>12 as the original conversation I had with Judy</p> <p>13 Armstrong.</p> <p>14 Q I apologize for taking this out of</p> <p>15 order but it's the way it came up. You indicated</p> <p>16 that if a person is found -- if -- if the forced</p> <p>17 leave is either withdrawn or the Civil Service</p> <p>18 Commission overrules it, that if vacation time had</p> <p>19 not been used during the forced leave, that they</p> <p>20 would be restored their lost pay. Is that correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And if I understood you</p> <p>23 correctly, if the vacation time was used during the</p> <p>24 forced leave, they would not be restored their</p> <p>25 vacation time under the circumstance where they</p>	<p>1 MR. BLANKE: Well, let me object --</p> <p>2 MS. HAMILTON: Objection, calls for a</p> <p>3 legal conclusion, and I'm going to direct the</p> <p>4 witness --</p> <p>5 MR. BLANKE: Well, he's --</p> <p>6 MS. HAMILTON: -- not to answer.</p> <p>7 MR. BLANKE: Well, he's the one</p> <p>8 that's used those words in his direct examination,</p> <p>9 that he thought it wasn't a property deprivation.</p> <p>10 Q (BY MR. BLANKE) Isn't that correct?</p> <p>11 A I was speaking of property</p> <p>12 deprivation in terms of loss of income. Of -- you</p> <p>13 know, of believing -- relying on -- on income. And</p> <p>14 this person would have remained on active status on</p> <p>15 the payroll during that period of time, having used</p> <p>16 vacation time or -- or compensatory time. There's</p> <p>17 no provision to double pay an employee --</p> <p>18 Q I'm not talking about double paying</p> <p>19 an employee.</p> <p>20 A Well, vacation time is, and I don't</p> <p>21 mean to be argumentative, but vacation time and</p> <p>22 compensatory time are paid out upon retirement or</p> <p>23 separation --</p> <p>24 Q Oh.</p> <p>25 A -- so it does have a monetary value</p>
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<p>1 either -- the forced leave is voluntarily withdrawn</p> <p>2 by the appointing authority or the Civil Service</p> <p>3 Commission disapproves it?</p> <p>4 A They would not be restored unless the</p> <p>5 period of forced leave were greater than the time</p> <p>6 that they had used. Again, if the forced leave</p> <p>7 period was, for example, for three weeks and they</p> <p>8 had elected to use time, accrued time for two</p> <p>9 weeks, they have been paid for two weeks and -- and</p> <p>10 there's -- we would not be able to double pay an</p> <p>11 employee --</p> <p>12 Q Right, so my question is --</p> <p>13 A -- so it would only be for that one</p> <p>14 week.</p> <p>15 Q But my question is different.</p> <p>16 A Then I don't understand. I'm sorry.</p> <p>17 Q My question is whether or not the</p> <p>18 vacation time would be restored. Not whether they</p> <p>19 would be paid twice, but that the vacation time</p> <p>20 they used, that they didn't have to use if they</p> <p>21 were never placed on forced leave --</p> <p>22 A No. It would not be restored.</p> <p>23 Q Okay. Why isn't that, in your</p> <p>24 opinion, a deprivation of a property right?</p> <p>25</p>	<p>1 and so it would, in an effect, amount to double</p> <p>2 pay.</p> <p>3 Q Well, that's assuming that he hadn't</p> <p>4 used it before he retired. Isn't that correct?</p> <p>5 MS. HAMILTON: Objection, vague.</p> <p>6 MR. NORWOOD: Join.</p> <p>7 Q (BY MR. BLANKE) That's assuming that</p> <p>8 the vacation time would not have been used before</p> <p>9 his separation from employment. If he had used</p> <p>10 that -- that vacation time, that, you know, isn't</p> <p>11 restored to him, but if it was restored to him and</p> <p>12 he had used it, then it would never -- then -- then</p> <p>13 he -- then he -- he wouldn't be getting that upon</p> <p>14 separation from employment; correct?</p> <p>15 MS. HAMILTON: Objection, vague and</p> <p>16 confusing and compound.</p> <p>17 MR. NORWOOD: And calls for a bunch</p> <p>18 of speculation.</p> <p>19 MS. HAMILTON: To the extent that you</p> <p>20 understood the question, you may answer.</p> <p>21 A The only thing I can say to that is</p> <p>22 while I understand your position or -- or the</p> <p>23 argument that an employee, you know, could be</p> <p>24 disadvantaged by being forced to use vacation or</p> <p>25 compensatory time in order to remaining in pay</p>

27 (Pages 105 to 108)

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<p style="text-align: right;">Page 109</p> <p>1 status during forced leave, you know, that -- this</p> <p>2 policy, you know, was written in conjunction with</p> <p>3 our law department, to whom I defer, and was also</p> <p>4 found to be lawful by the Court of Appeals.</p> <p>5 Q (BY MR. BLANKE) Okay. So you're</p> <p>6 just testifying, then, about your understanding of</p> <p>7 the law.</p> <p>8 A Yes.</p> <p>9 Q Okay. You also made a comment that</p> <p>10 -- maybe I'm not familiar with this, but is it</p> <p>11 possible for the appointing authority to request a</p> <p>12 forced leave with pay?</p> <p>13 A No.</p> <p>14 Q Okay. I misunderstood. Okay. All</p> <p>15 forced leaves are without pay unless they take</p> <p>16 their vacation time.</p> <p>17 A That's correct.</p> <p>18 Q Okay. Now, you said that it was some</p> <p>19 Saturday at 1:30 prior to the first forced leave</p> <p>20 request, that you received in writing?</p> <p>21 A Correct.</p> <p>22 Q That you had a discussion with Judy</p> <p>23 Armstrong --</p> <p>24 A Yes.</p> <p>25 Q -- on the phone. Correct?</p>	<p style="text-align: right;">Page 111</p> <p>1 that she would. I don't know if she came through</p> <p>2 or not, she did not speak, but I thought that -- I</p> <p>3 thought I heard another name, but I'm -- I'm not</p> <p>4 sure if it was Beth or Beverly or I might be</p> <p>5 mistaken.</p> <p>6 Q Okay. Fair enough. Now, you</p> <p>7 indicated that -- I thought you said that in that</p> <p>8 conversation with Judy Armstrong, that she informed</p> <p>9 you -- I'm talking about the phone call. The oral</p> <p>10 phone call on a Saturday. Okay?</p> <p>11 A Yes.</p> <p>12 Q That she informed you that</p> <p>13 Mr. Garavaglia was being accused of serious fiscal</p> <p>14 issues.</p> <p>15 A Yes.</p> <p>16 Q Can you be more specific than that?</p> <p>17 What -- what -- did she identify what she was</p> <p>18 talking about?</p> <p>19 A No, she did not.</p> <p>20 Q And that was enough for you?</p> <p>21 A It was enough because she said that</p> <p>22 they were serious enough that they were bringing</p> <p>23 them to the attention of the state auditors.</p> <p>24 Q Let me go back, I -- I hate -- sorry</p> <p>25 about jumping around.</p>
<p style="text-align: right;">Page 110</p> <p>1 A Yes, I'm sorry.</p> <p>2 Q Okay. And you thought that perhaps</p> <p>3 Beth Seright may have been on the phone because</p> <p>4 somebody told you that might have been the case, or</p> <p>5 something like that. Right?</p> <p>6 A I believe, yes. I believe that to be</p> <p>7 true.</p> <p>8 Q Is it possible you misunderstood the</p> <p>9 name and it was Beverly Fitzsimmons they told you</p> <p>10 was on the phone?</p> <p>11 A I don't recall that.</p> <p>12 Q I mean, Beth Seright was an</p> <p>13 administrative assistant at that time; right?</p> <p>14 A Right.</p> <p>15 Q And Beverly was -- was the other</p> <p>16 deputy; correct?</p> <p>17 A I -- I don't recall that. The</p> <p>18 Comptroller regularly used Chana Morton to connect</p> <p>19 her phone calls, and so I believe that Chana, to</p> <p>20 the best of my recollection, Chana was the person</p> <p>21 who put the call through. I spoke only with Judy</p> <p>22 Armstrong but I wasn't clear from Judy if</p> <p>23 Comptroller were, you know, going to participate on</p> <p>24 the phone call or not.</p> <p>25 And I think the suggestion was is</p>	<p style="text-align: right;">Page 112</p> <p>1 A That's okay.</p> <p>2 Q But you said that they -- they can --</p> <p>3 the appointing authority or -- can -- can -- or the</p> <p>4 department head, can remove somebody when they're</p> <p>5 placed on forced leave before you approve the</p> <p>6 forced leave. Is that correct?</p> <p>7 A Yeah. Yes.</p> <p>8 Q How is that -- what's the purpose of</p> <p>9 your approval?</p> <p>10 A The approval is to make sure that</p> <p>11 there's a short duration of time before the</p> <p>12 department personnel, as an objective reviewer, can</p> <p>13 determine whether or not the forced leave were</p> <p>14 appropriate. You know, there's weekends, there's</p> <p>15 holidays, and so there's a 72 period -- or a 72</p> <p>16 hour time period when they have to get that in to</p> <p>17 me, you know, in writing, and I conduct my review.</p> <p>18 So, you know, that's the purpose,</p> <p>19 but, you know, if you had an employee, for</p> <p>20 instance, who's got a gun at work, and that's</p> <p>21 happened --</p> <p>22 Q Right.</p> <p>23 A -- you have them removed immediately.</p> <p>24 You're not going to --</p> <p>25 Q No.</p>

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<p style="text-align: right;">Page 113</p> <p>1 A -- wait for Mr. Frank or his</p> <p>2 designate, you know, to be able to prove that.</p> <p>3 Q Now -- now, you've seen occasions</p> <p>4 where -- or you have had occasions where you have</p> <p>5 disapproved a requested forced leave, you</p> <p>6 testified?</p> <p>7 A Yes.</p> <p>8 Q Okay. Um, so in such a situation,</p> <p>9 and I'm not talking about Mr. Garavaglia here but</p> <p>10 just in general, in -- in such a situation where</p> <p>11 somebody's removed from the premises prior to your</p> <p>12 approval of the forced leave, because of the forced</p> <p>13 leave, and then you disapprove of the forced leave,</p> <p>14 I guess the appointing authority has to be deemed</p> <p>15 responsible for that removal; isn't that correct?</p> <p>16 MR. NORWOOD: Let me object, because</p> <p>17 it's vague and ambiguous --</p> <p>18 Q (BY MR. BLANKE) I mean, who's the --</p> <p>19 MR. NORWOOD: Let me finish.</p> <p>20 MR. BLANKE: Let me withdraw the</p> <p>21 question.</p> <p>22 MR. NORWOOD: I'm sorry?</p> <p>23 MR. BLANKE: I will withdraw the</p> <p>24 question.</p> <p>25 Q (BY MR. BLANKE) In that</p>	<p style="text-align: right;">Page 115</p> <p>1 trash, we have people who are in the parks, et</p> <p>2 cetera, where they might not be able to have access</p> <p>3 to their department director and they need to make</p> <p>4 an immediate decision in order to avoid a</p> <p>5 potentially very bad situation.</p> <p>6 Q Did Linda Thomas ever tell you that</p> <p>7 she had multiple conversations with Judy Armstrong</p> <p>8 about Mr. Garavaglia's forced leaves?</p> <p>9 A No.</p> <p>10 Q Did she ever tell -- did Linda Thomas</p> <p>11 ever tell you anything about any discussions she</p> <p>12 had with Miss Armstrong about the forced leaves?</p> <p>13 A Not with Miss Armstrong, no.</p> <p>14 Q What about any conversations Linda</p> <p>15 Thomas had with Comptroller Green --</p> <p>16 A Yes.</p> <p>17 Q -- about the forced leaves?</p> <p>18 And how many of those conversations</p> <p>19 do you recall with -- between you and Miss -- and</p> <p>20 Miss Thomas?</p> <p>21 A Oh, between myself and Miss Thomas?</p> <p>22 Q Yeah, about conversations that Miss</p> <p>23 Thomas had with Defendant Green.</p> <p>24 A Perhaps two or three.</p> <p>25 Q Okay. And what -- what do you recall</p>
<p style="text-align: right;">Page 114</p> <p>1 circumstances, it is the appointing authority who</p> <p>2 would make the sole -- who would be making the sole</p> <p>3 decision to remove that employee. Is that correct?</p> <p>4 A The employ --</p> <p>5 MR. NORWOOD: Let me object -- let me</p> <p>6 object because that assumes a bunch of facts that</p> <p>7 are not in evidence and it also mischaracterizes</p> <p>8 what he's already testified to. Subject to that,</p> <p>9 and subject to counsel's instruction.</p> <p>10 MS. HAMILTON: You can answer.</p> <p>11 A There -- there's different levels of</p> <p>12 appointing authorities. We have department heads,</p> <p>13 such as Sheena, who report directly to, you know,</p> <p>14 the Mayor.</p> <p>15 Q (BY MR. BLANKE) Right.</p> <p>16 A And then there are also lower levels</p> <p>17 of appointing authorities or designates. For</p> <p>18 instance, you know, maybe like a division person.</p> <p>19 And so those division -- those division people</p> <p>20 could be appointing authorities, but might very</p> <p>21 likely, and I would expect them to consult with</p> <p>22 their department head before they made a decision</p> <p>23 about forced leave, if it's possible.</p> <p>24 But we have a lot of field workers in</p> <p>25 the City, we have people, you know, collecting</p>	<p style="text-align: right;">Page 116</p> <p>1 the substance of those communications were about?</p> <p>2 A The substance was Linda was always</p> <p>3 very good about notifying me of any conversation</p> <p>4 she had with elected officials or Board of Aldermen</p> <p>5 or appointing authorities with a serious</p> <p>6 disciplinary matter and she just wanted to inform</p> <p>7 me that Comptroller had contacted her to ask her</p> <p>8 for a clarification on forced leave under</p> <p>9 Administrative Regulation 117.</p> <p>10 Q Was that before or after the phone</p> <p>11 call on -- on Saturday at 1:30?</p> <p>12 A After.</p> <p>13 Q Was that before or after you approved</p> <p>14 the first forced leave?</p> <p>15 A I orally supported the forced leave</p> <p>16 on Saturday, and I approved the forced leave on</p> <p>17 Monday. So I'm not sure of the exact timing of her</p> <p>18 conversation, just that she did in fact --</p> <p>19 Q So you think it's possible you may</p> <p>20 have talked to Miss Thomas, before your approval on</p> <p>21 Monday, about her conversations with Defendant</p> <p>22 Green?</p> <p>23 A I'm not sure.</p> <p>24 Q Okay.</p> <p>25 A I don't recollect, I'm sorry.</p>

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<p style="text-align: right;">Page 117</p> <p>1 Q Okay. You don't recall, you don't</p> <p>2 recall.</p> <p>3 The pre-termination letters. Letter,</p> <p>4 in this case. Do you approve those?</p> <p>5 A No.</p> <p>6 Q Okay. So do you even see them before</p> <p>7 they go out?</p> <p>8 A No.</p> <p>9 Q Okay. So you have no role in that.</p> <p>10 A No.</p> <p>11 Q Okay. But if, after the</p> <p>12 pre-termination review is held, and the appointing</p> <p>13 authority or department head wants to impose</p> <p>14 disciplinary action against the employee, you have</p> <p>15 to approve that?</p> <p>16 A Myself or my designated --</p> <p>17 Q Yeah.</p> <p>18 A -- the director of personnel or his</p> <p>19 or her designee does have to approve that. I</p> <p>20 continued throughout my tenure to review personally</p> <p>21 all police discipline, but that responsibility was</p> <p>22 delegated to my deputy director, whom I believe at</p> <p>23 the time, I'm sure, was -- was Kathleen Tanner.</p> <p>24 Q I'm jumping around again, for which I</p> <p>25 sincerely apologize, but.</p>	<p style="text-align: right;">Page 119</p> <p>1 there's no evidence to corroborate that, nothing to</p> <p>2 suggest that, but then that resurfaces eight years</p> <p>3 later, and you start -- you're seeing a pattern.</p> <p>4 So again, I think you have to look,</p> <p>5 as difficult as it can be, you have to look at the</p> <p>6 individual circumstances of what the allegation</p> <p>7 was, you know, and what the finding was at that</p> <p>8 time, and, you know, the recency, and does it</p> <p>9 connect with the current allegation, et cetera.</p> <p>10 So you have to look at it in terms of</p> <p>11 the totality, and that's what I would advise. And</p> <p>12 I think that that's why it's important.</p> <p>13 I will say that I don't always rely</p> <p>14 solely on my own judgment either. I work very</p> <p>15 closely with, you know, the highest members of our</p> <p>16 law department as well to make sure that my</p> <p>17 judgment, carrying the weight that it does, is</p> <p>18 appropriate. And that's what I did in this</p> <p>19 instance.</p> <p>20 Q (BY MR. BLANKE) I -- I thought you</p> <p>21 said that the -- I don't remember if you said it</p> <p>22 was an ordinance or the charter, that gives you the</p> <p>23 discretion to approve or disapprove a forced leave?</p> <p>24 A Actually, it's the administrative</p> <p>25 regulation that gives me --</p>
<p style="text-align: right;">Page 118</p> <p>1 A Mm-hmm.</p> <p>2 Q Going back to this idea of unearthing</p> <p>3 additional allegations which might justify a</p> <p>4 reinstatement of a previously withdrawn forced</p> <p>5 leave; okay? This -- my question is, what if the</p> <p>6 allegations that are unearthed in the investigation</p> <p>7 were remote -- were -- were in the past, before the</p> <p>8 forced leave was ever requested; okay? Number one.</p> <p>9 And number two, the department head</p> <p>10 knew about them. That these are not new</p> <p>11 allegations. That the department head knew all</p> <p>12 about it before the investigation. Would that</p> <p>13 justify the reinstatement of a forced leave?</p> <p>14 MR. NORWOOD: Well, let me object</p> <p>15 because I think it calls for speculation, improper</p> <p>16 hypothetical, and a legal conclusion. Subject to</p> <p>17 all of that, and subject to counsel.</p> <p>18 MS. HAMILTON: I was going to say,</p> <p>19 object that it's compound.</p> <p>20 MR. NORWOOD: I join in that part as</p> <p>21 well.</p> <p>22 A I would say it has to, again, be on a</p> <p>23 case-by-case basis. You may have an allegation,</p> <p>24 for instance, that let's say, as director, somebody</p> <p>25 alleged that I inappropriately touched them. And</p>	<p style="text-align: right;">Page 120</p> <p>1 Q 117?</p> <p>2 A Yes, it does, but there are other --</p> <p>3 I would say that there are other things that are</p> <p>4 discretionary. Such as granting Mr. Garavaglia an</p> <p>5 increase in salary. I don't rely just on my own</p> <p>6 discretion. I have the classification and</p> <p>7 compensation section review it.</p> <p>8 Similarly, if it's an employee</p> <p>9 grievance matter, I have service rating appeal</p> <p>10 boards and grievance boards, et cetera, that make a</p> <p>11 recommendation to me.</p> <p>12 So I try and gather as much available</p> <p>13 information as I can. You know, we have competent</p> <p>14 professionals that specialize within that.</p> <p>15 Q But these examples you just gave are</p> <p>16 all people working within your department, within</p> <p>17 the Department of Personnel. Correct?</p> <p>18 A Yes, but I have legal counsel. I'm</p> <p>19 represented by the City Counselor.</p> <p>20 Q So how often do you seek legal</p> <p>21 opinions from your legal counsel, the City</p> <p>22 Counselor's office --</p> <p>23 MR. BLANKE: Well --</p> <p>24 Q (BY MR. BLANKE) -- before you put</p> <p>25 somebody on forced leave?</p>

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<p>1 MR. NORWOOD: Well, let me object, 2 because there's no time reference. 3 MR. BLANKE: Well, just in -- 4 MS. HAMILTON: I'll just object to 5 the relevance of the question in that it seems to 6 be skirting on getting into privileged information. 7 MR. BLANKE: Well -- 8 MR. NORWOOD: I join in that 9 objection. 10 MR. BLANKE: -- my question stands. 11 THE WITNESS: May I answer it? 12 Q (BY MR. BLANKE) Is it -- let -- 13 MS. HAMILTON: I don't think you need 14 to answer the question. 15 Q (BY MR. BLANKE) -- I'll -- I'll just 16 add it, you -- you don't need to, but she doesn't 17 represent you. Okay? So it's your choice. 18 MS. HAMILTON: And why are you saying 19 he doesn't -- I don't represent him? 20 MR. BLANKE: Well, do you? 21 MS. HAMILTON: I'm representing the 22 City of St. Louis. He's -- 23 (Overtalking - inaudible.) 24 MR. BLANKE: Well, he's -- he's not 25 an employee -- he's not an employ -- he's not an</p>	<p>1 separate engagement letter with Mr. Frank. But you 2 have asked him here to testify as to his duties 3 when he was director of personnel. 4 MR. BLANKE: All right. Let's cut to 5 the chase. Are you instructing him -- 6 MS. HAMILTON: And he -- 7 MR. BLANKE: -- not to answer the 8 question? 9 MS. HAMILTON: Yes, about how often 10 you consult your counsel, you do not have to answer 11 that question. 12 Q (BY MR. BLANKE) Okay, and I'm asking 13 you to answer the question. She's telling you that 14 she represents you and you shouldn't answer the 15 question, so what are you going to do? I mean, 16 it's your choice. 17 A I feel that my discussions with my 18 legal counsel are privileged. I'm not an attorney, 19 but I believe -- 20 Q Right. 21 A -- they're privileged, and I have 22 ongoing consultation and have had ongoing 23 consultation in my role as former director of 24 personnel with upcoming lawsuits. So I decline. 25 Q Right, and -- and let's be clear.</p>
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<p>1 employee of the City of St. Louis. What are you 2 talking about? 3 MS. HAMILTON: He is a -- you're 4 asking him here to testify as Director of -- as his 5 work as the director of personnel; correct? 6 MR. BLANKE: No. We're asking -- 7 MS. HAMILTON: Every question you've 8 asked him about has been about his duties as the 9 director of personnel. So I'm very confused -- 10 MR. BLANKE: No. No. We're asking 11 him about his -- his -- his -- his duties as a 12 former director of personnel. 13 MS. HAMILTON: Okay. 14 MR. BLANKE: Not as the director of 15 personnel. He's not a City employee -- 16 (Overtalking - inaudible.) 17 MS. HAMILTON: -- and I object on 18 behalf of the City of St. Louis -- 19 MR. BLANKE: -- and you do not 20 represent him. Do you? 21 MS. HAMILTON: Absolutely. 22 MR. BLANKE: I mean, you -- so you 23 have a separate re -- you have a separate 24 engagement letter with Mr. Frank? 25 MS. HAMILTON: No, I don't have a</p>	<p>1 I'm not asking you about the substance of any -- 2 MS. HAMILTON: He was -- just -- just 3 so that we're clear -- 4 A I decline. 5 MS. HAMILTON: -- he was finishing 6 his answer and he was going to say that he 7 declines. 8 MR. BLANKE: Oh, I'm sorry. I'm 9 sorry. Oh. 10 A Yeah. I decline to answer that. 11 Q (BY MR. BLANKE) Okay. Well, let me 12 -- let me -- you decline to answer the question. I 13 think you did, though, but let me ask. To be 14 clear, I'm not asking you about the substance of 15 any communications you had with any lawyer, much 16 less the City Counselor's office. 17 I'm simply asking you whether or not 18 you consulted them at all with regard to your 19 forced leave decisions, and if that -- if so, how 20 common of a practice was that? 21 MS. HAMILTON: And as to the first 22 question -- you know, because this is a compound 23 one again. As to the first question of has he 24 ever, I think he's testified to that already, so 25 I'm going to --</p>

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<p>1 MR. BLANKE: Right.</p> <p>2 MS. HAMILTON: -- object that it's</p> <p>3 asked and answered.</p> <p>4 MR. BLANKE: Right.</p> <p>5 MS. HAMILTON: As to the frequency</p> <p>6 with which he does so, again, I think you're</p> <p>7 skirting on attorney-client privilege, and I'll</p> <p>8 instruct the witness not to answer.</p> <p>9 MR. BLANKE: So you're now agreeing</p> <p>10 that he did answer the question that he said he</p> <p>11 didn't answer.</p> <p>12 MS. HAMILTON: No, your question that</p> <p>13 I objected to was how frequently do you --</p> <p>14 MR. BLANKE: Right.</p> <p>15 MS. HAMILTON: -- take advice from</p> <p>16 counsel --</p> <p>17 MR. BLANKE: That's the second part.</p> <p>18 MS. HAMILTON: -- regarding forced</p> <p>19 leave. Yeah.</p> <p>20 MR. BLANKE: That's --</p> <p>21 MS. HAMILTON: And that's the</p> <p>22 question I objected to.</p> <p>23 MR. BLANKE: Okay.</p> <p>24 MS. HAMILTON: I did not object to</p> <p>25 the first.</p>	<p>1 The City's -- City's Director of</p> <p>2 Personnel approved the forced leave</p> <p>3 each time knowing that there was</p> <p>4 no --</p> <p>5 MS. HAMILTON: Where are you, sir?</p> <p>6 MR. BLANKE: This is Paragraph 17 of</p> <p>7 the Complaint --</p> <p>8 MR. NORWOOD: Page --</p> <p>9 MR. BLANKE: -- on page 4 of Exhibit</p> <p>10 1. Just take a look at that.</p> <p>11 Q (BY MR. BLANKE) Here's my question.</p> <p>12 When is the first time you learned that that</p> <p>13 allegation was made?</p> <p>14 A At the time that I received a copy of</p> <p>15 this exhibit.</p> <p>16 Q And when was that?</p> <p>17 A I don't remember. I don't remember</p> <p>18 at the time. I remember that -- that Mr.</p> <p>19 Garavaglia retired in the fall of 2019, but I'm not</p> <p>20 sure of when this wound its way up to court.</p> <p>21 Q So this would have been before you</p> <p>22 found out you were going to be deposed in this</p> <p>23 case?</p> <p>24 A Yes.</p> <p>25 Q Okay. How did you prepare for this</p>
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<p>1 Q (BY MR. BLANKE) So how frequently do</p> <p>2 you seek City Counselor advice with regard to</p> <p>3 whether you should approve a forced leave or not?</p> <p>4 MS. HAMILTON: Same objection, and</p> <p>5 same recommendation.</p> <p>6 MR. NORWOOD: And let me object in</p> <p>7 terms of no time reference, because he's no longer</p> <p>8 director of personnel today.</p> <p>9 Q (BY MR. BLANKE) Well, I had a time</p> <p>10 reference. I'm talking about during the time you</p> <p>11 were the director of personnel.</p> <p>12 MS. HAMILTON: Same objection; same</p> <p>13 instruction.</p> <p>14 A I would still say that, yes, I have</p> <p>15 consulted on -- on matters of forced leave with the</p> <p>16 City Counselor and I decline to go into any more</p> <p>17 specifics than that.</p> <p>18 Q (BY MR. BLANKE) Mr. Frank, you -- I</p> <p>19 don't know if you read it or Mr. Norwood read it to</p> <p>20 you, that paragraph 17 of the Complaint where --</p> <p>21 where -- let's see if I can find it.</p> <p>22 MR. NORWOOD: Tab 1.</p> <p>23 MR. BLANKE: Thank you.</p> <p>24 MR. NORWOOD: Page 4.</p> <p>25 Q (BY MR. BLANKE) (Quote as read):</p>	<p>1 deposition?</p> <p>2 A The only way that I prepared for this</p> <p>3 deposition was through two discussions with my --</p> <p>4 with legal counsel.</p> <p>5 Q Did you have any discussions prior to</p> <p>6 this deposition with Mr. Norwood?</p> <p>7 A Yes.</p> <p>8 Q What about?</p> <p>9 A About this case.</p> <p>10 Q What about more specifically? What</p> <p>11 about the case?</p> <p>12 A Just about preparing for the</p> <p>13 deposition.</p> <p>14 Q Did you go over in detail any of the</p> <p>15 exhibits used in his direct examination, with him?</p> <p>16 A Just -- just a few of them.</p> <p>17 MS. HAMILTON: You can answer.</p> <p>18 A Just a few of them. We did not go</p> <p>19 over this. We went over, um, we went over the --</p> <p>20 my discussion in -- with Judy Armstrong, and we</p> <p>21 discussed the forced leave letters, and we</p> <p>22 discussed -- we discussed the, yeah. The -- the</p> <p>23 general timing of that.</p> <p>24 Q (BY MR. BLANKE) Altogether, do you</p> <p>25 have any estimate -- can you give me an estimate of</p>

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<p>1 how much time you spent with Mr. Norwood preparing</p> <p>2 for this deposition?</p> <p>3 MR. NORWOOD: Let me object because</p> <p>4 you didn't -- well, I'll withdraw the objection.</p> <p>5 A An hour the first time, and perhaps</p> <p>6 an hour and 50 minutes the second time.</p> <p>7 Q (BY MR. BLANKE) Was Darlene Green</p> <p>8 present?</p> <p>9 A No.</p> <p>10 Q Have you discussed this matter with</p> <p>11 -- have you discussed this lawsuit with Comptroller</p> <p>12 Green since you found out about it?</p> <p>13 A This lawsuit, one time.</p> <p>14 Q When was that?</p> <p>15 A Sometime during 2021.</p> <p>16 Q What was that discussion about?</p> <p>17 A The discussion was just her concern</p> <p>18 about the audit findings, what the auditors might</p> <p>19 -- might find and what they would report about the</p> <p>20 allegations that she had made against Mr. --</p> <p>21 Q Oh, I'm sorry. So you're talking</p> <p>22 about before he retired.</p> <p>23 A Yes.</p> <p>24 Q I'm sorry. I meant after he retired.</p> <p>25 A Oh. You -- I'm confused.</p>	<p>1 about the substance of those allegations in the</p> <p>2 pre-termination letter?</p> <p>3 A Not substance, no.</p> <p>4 Q Okay. Did you ever discuss with</p> <p>5 Comptroller Green or Judy Armstrong any of the</p> <p>6 substance of the allegations that ended up in the</p> <p>7 pre-termination letter?</p> <p>8 A No.</p> <p>9 Q You indicated that the pay ordinance</p> <p>10 in the City of St. Louis provides for a 5 percent,</p> <p>11 what's it called, a step increase? A merit step</p> <p>12 increase?</p> <p>13 A Yeah, a 5 percent salary adjustment.</p> <p>14 Q Per grade?</p> <p>15 A Any time there's a promotion or</p> <p>16 reclassification upward, a person is entitled to a</p> <p>17 minimum of 5 percent of their current salary. It's</p> <p>18 maxed out, however, at 20 percent.</p> <p>19 Q Because the grade has a -- a minimum</p> <p>20 and a maximum, there's -- it's not just a -- an</p> <p>21 amount. It's -- it's a -- it's a range of pay.</p> <p>22 Right?</p> <p>23 A That is true, except the last four</p> <p>24 years, at least, as director, I had removed the top</p> <p>25 of the range because we knew our salaries were not</p>
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<p>1 Q Let me -- let me ask a different</p> <p>2 question.</p> <p>3 A Yeah, I'm confused, I'm sorry.</p> <p>4 Q Yeah, I -- I -- it's my fault.</p> <p>5 Did you have any discussions with</p> <p>6 Comptroller Green after you found out about this</p> <p>7 lawsuit, about the lawsuit?</p> <p>8 A I did have one discussion.</p> <p>9 Q When was that?</p> <p>10 A I don't remember. It was before I</p> <p>11 retired. Sometime during -- I think sometime</p> <p>12 during 2021.</p> <p>13 Q And what -- and what specifically did</p> <p>14 you discuss with her at that time?</p> <p>15 A Her concerns about what the state</p> <p>16 auditors would report about financial problems, and</p> <p>17 I believe that she mentioned there were problems</p> <p>18 with corrections, but that's all. I didn't go into</p> <p>19 any great detail.</p> <p>20 I did read the -- and that was the</p> <p>21 other document, pardon me, that I did go through</p> <p>22 with -- with counsel was the pre-termination</p> <p>23 letter, which I had not seen until after it was</p> <p>24 delivered to Mr. Garavaglia.</p> <p>25 Q Okay. Did you go into a discussion</p>	<p>1 competitive. And until we completed our slowed</p> <p>2 down City-wide compensation study, slowed down</p> <p>3 because of COVID, we wanted -- I consulted with,</p> <p>4 you know, Mayor Jones and also with -- with Mayor</p> <p>5 Krewson and we had agreed that we thought it best</p> <p>6 to allow employees to go beyond the top of the pay</p> <p>7 grades so that they could continue to receive</p> <p>8 well-deserved increases.</p> <p>9 Q Okay. So -- so the 5 percent is a</p> <p>10 minimum, and it can be larger than that if -- if</p> <p>11 the difference between the two grades, you know,</p> <p>12 one's at the bottom, one's at the top. Something</p> <p>13 like that; right?</p> <p>14 A That's true, or if it's requested by</p> <p>15 the appointing authority and I approve it.</p> <p>16 Q Right. But I'm talking about the</p> <p>17 automatic merit step increase.</p> <p>18 A Correct.</p> <p>19 Q Yeah.</p> <p>20 A For instance, if you had a</p> <p>21 receptionist who went to administrative assistant,</p> <p>22 there may be a 10 percent jump between where that</p> <p>23 person's at and where the start of the new pay</p> <p>24 range is, so it could result in a higher grade.</p> <p>25 Q Okay. So also if -- if somebody,</p>

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<p style="text-align: right;">Page 133</p> <p>1 let's say, was a -- I'm just going to make 2 something up -- a -- a grade 10. I don't even know 3 what that means. But, you know, they were a grade 4 10, and they were being promoted to -- to a grade 5 12, okay, would that be, you know, a minimum 5 6 percent, or a minimum 10 percent step increase? 7 A Your -- that would be a minimum of 5 8 percent, because the difference between the grades 9 isn't that great. That would more than likely be a 10 grade 5 -- or excuse me, a promotion of 5 percent, 11 again, unless it were requested by the appointing 12 authority and reviewed by my class and comp 13 division and then approved by me. 14 Q Yeah, let's stay out of that area. 15 I'm not talking about, what do you call, 16 non-standard pay increases. 17 A Yeah. 18 Q I'm talking about the standard step 19 increases. 20 A The standard, yeah, standard 21 promotional increase is 5 percent. 22 Q And that doesn't matter how many 23 grades they're being promoted? If it's resulting 24 from a promotion, it -- it doesn't matter how many 25 grades they're being promoted?</p>	<p style="text-align: right;">Page 135</p> <p>1 that now -- 2 MS. HAMILTON: Just -- I just was 3 saying, you keep saying "step increase," he keeps 4 saying "salary adjustment." You keep going back to 5 the wrong phrase. Um -- you see? 6 Q (BY MR. BLANKE) Well, the salary 7 adjustment is -- is called a "Merit (Step) 8 increase," is it not? 9 A Yes. That's only because, again, 10 it's a salary adjustment based on a promotion, 11 demotion, can be reduction in pay for disciplinary 12 reasons. 13 Q Right. 14 A It -- you know, there are different 15 things that can cause that, so we call -- call it a 16 salary adjustment. 17 Step means that the Department of 18 Personnel is responsible for rounding out that 19 figure to the closest approved amount. That's why 20 we said in those letters that it -- you know, if 21 they ask for 10 percent, we will put it to the step 22 that's closest to 10 percent. 23 Q So if I understand you correctly, 24 it's possible to get as much as a 10 percent 25 increase, not as a minimum distribution, but as a</p>
<p style="text-align: right;">Page 134</p> <p>1 A I think I've already stated that if 2 the -- you get 5 percent, or you go to the minimum 3 of the new range. So if you had a person who were 4 at a lower level job and then made a big jump, 5 perhaps they had prior experience outside the City 6 and were very qualified, whatever, they -- they 7 would go to the minimum of the new pay range. 8 Q That much I understand. But my -- my 9 question is, and maybe you're answering it and I 10 just want to make sure, that if you are being 11 promoted two -- two grades, okay, that it wouldn't 12 be a minimum 10 percent -- 13 A No -- 14 Q -- distribution. 15 (Overtalking - inaudible.) 16 Q It would still be a minimum 5 percent 17 distribution? 18 A You're correct. 19 Q So -- so the amount of the grades has 20 nothing to do -- that's being promoted, has nothing 21 to do with the minimum step distrib -- step 22 increase? 23 A Correct. Provided that the grade 24 difference isn't so much. We've covered that. 25 Q Right. Right. Okay. So back to</p>	<p style="text-align: right;">Page 136</p> <p>1 maximum distribution -- 2 MS. HAMILTON: I'm going to object 3 that it -- 4 Q (BY MR. BLANKE) -- is that -- is 5 that not correct? 6 MS. HAMILTON: -- mischaracterizes -- 7 THE REPORTER: I'm sorry, say that -- 8 MS. HAMILTON: I would just object 9 that it mischaracterizes his prior testimony 10 regarding the 20 percent. 11 THE WITNESS: Right. 12 Q (BY MR. BLANKE) Explain to me why 13 I'm wrong. 14 A It's 20 -- it could be 20 percent 15 or -- 16 Q Oh, that's right. 17 A Just the discretionary one could be 18 20 percent, but it could be more. 19 Q Yeah, I'm not talking about the 20 discretionary one. 21 A Okay. 22 Q I'm talking about the standard -- 23 A Yeah. 24 (Overtalking - inaudible.) 25 A Well, the standard one, again, could</p>

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<p>1 be more than 20 percent. It --</p> <p>2 Q Gotcha.</p> <p>3 A Because you have to go to the bottom.</p> <p>4 Q Right.</p> <p>5 A Let's, for instance, you know, if I</p> <p>6 made \$170,000 a year, and I come back to work as,</p> <p>7 you know, a clerk typist making 35,000, and then I</p> <p>8 get promoted to an executive assistant 2 that makes</p> <p>9 75,000 a year, or whatever the minimum that --</p> <p>10 minimum is, you can see that you can conceivably</p> <p>11 get a 100 percent increase, or more. So it really</p> <p>12 depends on those pay ranges.</p> <p>13 Q Gotcha. Okay. You indicated that</p> <p>14 these merit step increases are annually and -- done</p> <p>15 annually? They were at that time back in -- when</p> <p>16 you were director; right?</p> <p>17 A Yes.</p> <p>18 Q And they are automatic unless the</p> <p>19 service ratings were unsuccessful in -- in some</p> <p>20 way.</p> <p>21 A Yes.</p> <p>22 Q Okay. And you also indicated that if</p> <p>23 a -- an appointing authority or a department head</p> <p>24 failed to provide service ratings, you would look</p> <p>25 at the most recent service rating in order to</p>	<p>1 happened, they -- the person would have to have</p> <p>2 some service rating in order to get permanent</p> <p>3 status.</p> <p>4 I've talked about the working test</p> <p>5 period. In order to gain status as a permanent</p> <p>6 civil service employee, the appointing authority</p> <p>7 has to submit, you know, a service rating granting</p> <p>8 them, you know, permanent status.</p> <p>9 Although, I guess if they fail to</p> <p>10 grant -- if they fail to submit the working test</p> <p>11 period one, they would automatically get status</p> <p>12 there too.</p> <p>13 Q So you're saying the automatic annual</p> <p>14 increases are going to be provided, regardless of</p> <p>15 whether there's any service ratings or not, unless</p> <p>16 there is a service rating that's unsuccessful; is</p> <p>17 that right?</p> <p>18 A That's correct. Unless one were</p> <p>19 never done in the first place, because then there</p> <p>20 would be nothing in the file --</p> <p>21 Q Right.</p> <p>22 A -- saying this person were</p> <p>23 successful.</p> <p>24 So if you did have that person who</p> <p>25 gets hired as an attorney 1, let's say, and never</p>
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<p>1 determine whether there was an unsuccessful service</p> <p>2 rating to disapprove these increases. These pay</p> <p>3 increases. Is that what you said?</p> <p>4 A What I said is that if -- it would</p> <p>5 default, if they did not conduct the annual service</p> <p>6 rating and did not get it into the Department of</p> <p>7 Personnel by the due date, it would default to the</p> <p>8 last service rating; provided, however, that the</p> <p>9 last service rating were successful --</p> <p>10 Q Right.</p> <p>11 A -- or highly successful.</p> <p>12 Q Right.</p> <p>13 A If it were unsuccessful, then they</p> <p>14 have to do a rating. One has to be submitted.</p> <p>15 Because --</p> <p>16 Q Okay.</p> <p>17 A -- we would not deprive the employee</p> <p>18 of their possible service rating based on the --</p> <p>19 the appointing authority not submitting a service</p> <p>20 rating in time.</p> <p>21 Q What happens if there was no service</p> <p>22 rating ever provided?</p> <p>23 A Ever provided?</p> <p>24 Q Then what -- then what do you do?</p> <p>25 A If that -- well, if that never</p>	<p>1 gets rated, never gets rated at all, you know, they</p> <p>2 would go through their initial working test period,</p> <p>3 which would be six months, it wouldn't have been</p> <p>4 extended if there was no request to do so, and that</p> <p>5 person would default into permanent status, but</p> <p>6 they would have no rating to go back to --</p> <p>7 Q So do they get the automatic</p> <p>8 increases under that circumstance?</p> <p>9 A No, they would not.</p> <p>10 Q They would not. Okay.</p> <p>11 A No.</p> <p>12 Q Now, what happens if somebody is</p> <p>13 given service ratings in one position, and then</p> <p>14 they're promoted, and then after the promotion</p> <p>15 there's no service ratings?</p> <p>16 A It would still go back to the last</p> <p>17 service rating done regardless.</p> <p>18 Q Even in the prior --</p> <p>19 A Correct.</p> <p>20 Q -- junior position they were in?</p> <p>21 A Correct.</p> <p>22 Q Okay. And where is all this written?</p> <p>23 In -- in the pay ordinance, or -- or where? Where</p> <p>24 is it codified? Where is this -- where do these</p> <p>25 rules come from?</p>

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<p>1 A There is a variety of sources. One</p> <p>2 would be the compensation ordinance.</p> <p>3 Q Right.</p> <p>4 A One would also be the administrative</p> <p>5 regulations for the Department of Personnel. And</p> <p>6 then also it would be in the service rating manual</p> <p>7 which is approved by the Civil Service Commission.</p> <p>8 Q And how often is that updated or</p> <p>9 modified? The manual.</p> <p>10 A Not very often. I believe the last</p> <p>11 time was when we worked with the police division</p> <p>12 and integrated, you know, the police division into</p> <p>13 our system.</p> <p>14 Q You -- you said that, you know, all</p> <p>15 service -- supervisors do not rate their employees</p> <p>16 and that this is fairly common; right?</p> <p>17 A Yes.</p> <p>18 Q Does that mean it's not required? Or</p> <p>19 it's just commonly not followed?</p> <p>20 A It's just commonly not followed.</p> <p>21 Q It still is required --</p> <p>22 MR. NORWOOD: Well, let me object --</p> <p>23 Q (BY MR. BLANKE) isn't that correct?</p> <p>24 MR. NORWOOD: -- because it calls for</p> <p>25 a legal conclusion, and it also excludes certain</p>	<p>1 July 2, 2019, to you from Darlene Green. And one,</p> <p>2 two, three, four paragraphs.</p> <p>3 MR. NORWOOD: What page are we on?</p> <p>4 MR. BLANKE: The second page.</p> <p>5 MR. NORWOOD: Okay.</p> <p>6 Q (BY MR. BLANKE) Correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. And if you refer to the next</p> <p>9 page after that, which is also a letter dated on</p> <p>10 the same date of July 2, 2019, to you from Darlene</p> <p>11 Green, those letters are not identical, are they?</p> <p>12 A That's correct.</p> <p>13 Q Okay. They both say, however, in the</p> <p>14 first -- where am I here. The second one you've</p> <p>15 already testified, I think it was another exhibit</p> <p>16 letter, or number --</p> <p>17 A Yes.</p> <p>18 Q -- Is your -- it's got your</p> <p>19 handwriting on it that approves the forced leave;</p> <p>20 is that correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And that, that is your</p> <p>23 handwriting, you said that; right?</p> <p>24 A Yes.</p> <p>25 Q Yeah. So why did you approve that</p>
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<p>1 facts. Subject to that.</p> <p>2 MS. HAMILTON: And I would just</p> <p>3 object that it's vague and ambiguous, the question.</p> <p>4 Q (BY MR. BLANKE) Go ahead.</p> <p>5 A Would you repeat the question? I'm</p> <p>6 sorry.</p> <p>7 MR. BLANKE: Can you read it back?</p> <p>8 You don't have to read it back. I'll just repeat</p> <p>9 it.</p> <p>10 Q (BY MR. BLANKE) Are service ratings</p> <p>11 required by department heads or appointing</p> <p>12 authorities?</p> <p>13 A They are required.</p> <p>14 Q By what?</p> <p>15 A By the service rating manual.</p> <p>16 Q Okay. Okay. I've put in front of</p> <p>17 you Plaintiff's Exhibit O. And it's a big package.</p> <p>18 I see you've taken the clip off, that's fine, but</p> <p>19 try not to get it out of order.</p> <p>20 A I'll clip it for you.</p> <p>21 Q Okay.</p> <p>22 A As long as I can bend it, it'll be</p> <p>23 all right.</p> <p>24 Q Okay. So if you'll turn to the</p> <p>25 second page, which purports to be a letter dated</p>	<p>1 version of the letter instead of the previous</p> <p>2 version of the letter?</p> <p>3 MR. NORWOOD: Let me object --</p> <p>4 Q (BY MR. BLANKE) Or did you receive</p> <p>5 both letters? That's the first question, I guess.</p> <p>6 A No.</p> <p>7 Q You did not.</p> <p>8 A No.</p> <p>9 Q Okay. So your testimony is you never</p> <p>10 received page 2 of Exhibit O. It's not labeled but</p> <p>11 just the second page. The one -- the letter</p> <p>12 identified as the July 2nd letter from -- from</p> <p>13 Darlene Green to Richard Frank in four paragraphs.</p> <p>14 You never received that one?</p> <p>15 A It's four paragraphs that talks</p> <p>16 about --</p> <p>17 Q Four paragraphs total?</p> <p>18 A -- adequately -- (Quote as read):</p> <p>19 failure to adequately supervise,</p> <p>20 delegate, or perform his essential</p> <p>21 duties?</p> <p>22 Q Right.</p> <p>23 A I -- I don't recollect ever having</p> <p>24 seen that.</p> <p>25 Q Okay. Now, if you turn to the next</p>

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<p>1 page, this is -- on the top it says Approval of</p> <p>2 Forced Leave, it's an email dated July 2, 2019,</p> <p>3 same day, from you to Darlene Green with a copy to</p> <p>4 Chana Morton; is that correct?</p> <p>5 A Yes.</p> <p>6 Q And again, you are approving the</p> <p>7 request. Right?</p> <p>8 A Yes.</p> <p>9 Q And you say "pending his</p> <p>10 pre-termination review." Is that correct?</p> <p>11 A Yes.</p> <p>12 Q Where -- where -- where does it say</p> <p>13 that? That this is pending -- why did you add that</p> <p>14 phrase, "pending his pre-termination review"?</p> <p>15 A Because during this initial</p> <p>16 discussion that I had with Ms. Armstrong on</p> <p>17 Saturday, the Saturday before this date, they</p> <p>18 indicated that the allegations against</p> <p>19 Mr. Garavaglia were so serious as to warrant forced</p> <p>20 leave in their opinion.</p> <p>21 And I specifically inquired what</p> <p>22 action, you know, they were seeking, and they</p> <p>23 explained that they were -- they believed that they</p> <p>24 would investigate and it may result in a</p> <p>25 pre-termination review.</p>	<p>1 detail than to say that it may have had something</p> <p>2 to do with corrections. That's the only thing I</p> <p>3 knew. So this is --</p> <p>4 Q Now -- now, in this letters to Jim</p> <p>5 Garavaglia, also dated July 2nd, Miss Green says</p> <p>6 the same thing you said in your approval email.</p> <p>7 That (Quote as read):</p> <p>8 you are being placed on official</p> <p>9 forced leave, pending a</p> <p>10 pre-termination hearing.</p> <p>11 They say that. Right?</p> <p>12 A Yes.</p> <p>13 Q Both of them do. Both of these</p> <p>14 versions of this notice to Mr. Garavaglia of the</p> <p>15 forced leave say that. Correct?</p> <p>16 A Yes.</p> <p>17 Q So do you recall, when you talked to</p> <p>18 Miss Armstrong on that Saturday, whether she said</p> <p>19 that this was going to head up -- this was going to</p> <p>20 end up as a pre-termination hearing, or anything to</p> <p>21 that effect?</p> <p>22 A She indicated that it could, pending</p> <p>23 the investigation. That it could end up as a</p> <p>24 pre-termination hearing, and we discussed what that</p> <p>25 procedure entailed.</p>
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<p>1 And I advised them at that point.</p> <p>2 Q And then if you look at the next two</p> <p>3 pages, which are letters from Darlene Green to</p> <p>4 Mr. Garavaglia, both dated, again, July 2 of 2019,</p> <p>5 did you ever see those before? To the best of your</p> <p>6 recollection?</p> <p>7 A The one on July 2nd. It's not</p> <p>8 numbered, but --</p> <p>9 Q They're all dated July 2nd.</p> <p>10 A Yeah, this first one, no. Again,</p> <p>11 that's talking about failure to, um, supervise.</p> <p>12 No, that one I don't recollect having seen.</p> <p>13 Q And the next one?</p> <p>14 A Yes. That one I do. I do recollect</p> <p>15 seeing.</p> <p>16 Q Now, how do you remember that? Which</p> <p>17 is which? How do you know the one you saw and the</p> <p>18 one you didn't see?</p> <p>19 A Because I knew nothing about the</p> <p>20 specificity of the allegations involving the</p> <p>21 Municipal Court during my conversation with</p> <p>22 Ms. Armstrong.</p> <p>23 The only thing I heard was that she</p> <p>24 said that there were serious allegations of -- of</p> <p>25 fiscal improprieties, and she went into no greater</p>	<p>1 Q Were you or, to the best of your</p> <p>2 knowledge, anyone in your office involved in any</p> <p>3 way with what either of these two letters to</p> <p>4 Mr. Garavaglia from Defendant Green should or</p> <p>5 should not say?</p> <p>6 A I indicated during my conversation</p> <p>7 with Ms. Green's office, Judy Armstrong, on</p> <p>8 Saturday that they needed to indicate, you know, to</p> <p>9 me that he was being placed on forced leave, they</p> <p>10 were requesting to place him on forced leave, and</p> <p>11 that they needed to notify him of his right to take</p> <p>12 any accrued compensatory time, vacation time, and</p> <p>13 also that, you know, the nature of the allegations</p> <p>14 were serious.</p> <p>15 Q This was on the Saturday</p> <p>16 conversation?</p> <p>17 A Yes.</p> <p>18 Q Before you even received a written</p> <p>19 request?</p> <p>20 A Yes.</p> <p>21 Q Okay. But you didn't actually --</p> <p>22 when did you receive this -- this second letter</p> <p>23 dated -- that is addressed to James Garavaglia on</p> <p>24 July 2nd? When did you receive that one?</p> <p>25 A I received that on Tuesday -- I</p>

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<p>1 believe it was Tuesday, July 3.</p> <p>2 Q Now, how do you remember that?</p> <p>3 A Because I remember calling Judy</p> <p>4 Armstrong's and leaving a message that, you know, I</p> <p>5 would be happy to take a look at the -- the letter,</p> <p>6 you know, to Mr. Garavaglia to make sure that it</p> <p>7 was in proper form. And they indicated that they</p> <p>8 would send it to me on Monday.</p> <p>9 But I did not get it Monday. This</p> <p>10 letter was hand-delivered to me a day after I</p> <p>11 expected it and it had already been delivered to</p> <p>12 Mr. Garavaglia.</p> <p>13 Q Now, I also note that, with regard to</p> <p>14 this first letter addressed to James Garavaglia on</p> <p>15 July 2nd, it says that you were copied in on it.</p> <p>16 But that doesn't change your testimony; right?</p> <p>17 A No, it does not.</p> <p>18 Q Okay. Do you or anyone in your</p> <p>19 office normally have any involvement in how the</p> <p>20 letters to the employee advising of the forced</p> <p>21 leave should be delivered? Whether by --</p> <p>22 A Delivered?</p> <p>23 Q Delivered. By certified mail or</p> <p>24 regular mail or hand delivery? Do you have any</p> <p>25 input into that?</p>	<p>1 are being pre-terminated, don't live at the address</p> <p>2 where they really do live, or they've moved, or</p> <p>3 they simply will refuse to accept a Certified</p> <p>4 letter, and that becomes a problem for us and we</p> <p>5 want to ensure proper service.</p> <p>6 So we recommend to the appointing</p> <p>7 authorities, and I believe the law department, on</p> <p>8 information and belief, also has -- you know, tells</p> <p>9 employees --</p> <p>10 MS. HAMILTON: And I'm not going to</p> <p>11 -- I'm going to --</p> <p>12 THE WITNESS: Okay.</p> <p>13 MS. HAMILTON: -- advise you again</p> <p>14 not to get into the law department --</p> <p>15 THE WITNESS: Okay.</p> <p>16 MS. HAMILTON: -- conversations.</p> <p>17 THE WITNESS: Okay.</p> <p>18 A That's our position. That that's</p> <p>19 what we tell employees -- or supervisors --</p> <p>20 Q (BY MR. BLANKE) If you go back to</p> <p>21 the third -- the third page where your approval</p> <p>22 handwriting is on the letter to you from Darlene</p> <p>23 Green where it says "Approved"?</p> <p>24 A Yes.</p> <p>25 Q Those are your initials; is that</p>
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<p>1 A We typically advise employees to send</p> <p>2 them out, you know, Certified letter, and also, if</p> <p>3 possible, in person, to ensure service.</p> <p>4 Q Did that come up in the -- in the</p> <p>5 conversation with Judy Armstrong?</p> <p>6 A Not to my recollection.</p> <p>7 Q Do you know how these letters were</p> <p>8 delivered --</p> <p>9 A No --</p> <p>10 Q -- to Jim Garavaglia?</p> <p>11 A Do I know how they were delivered?</p> <p>12 Q Yes.</p> <p>13 A No, I don't.</p> <p>14 Q And -- and I'm not sure I understand</p> <p>15 -- if I understand you correctly, and correct me if</p> <p>16 I'm mischaracterizing what you just said. You're</p> <p>17 saying that they should be delivered by Certified</p> <p>18 mail?</p> <p>19 A We recommend that they go out two</p> <p>20 ways, you know, either through Certified or</p> <p>21 Registered mail, and also, if possible,</p> <p>22 hand-delivered. Because we don't want the</p> <p>23 situation to occur where an employee says, "I never</p> <p>24 got the notice."</p> <p>25 We have situations where employees</p>	<p>1 right? Is that supposed to be RF or -- I can't</p> <p>2 tell.</p> <p>3 A Yes.</p> <p>4 Q Okay. And then that was July 2nd.</p> <p>5 You approved this on July 2nd. Correct?</p> <p>6 A Yes.</p> <p>7 Q Okay. So when you approved the</p> <p>8 forced leave, had you seen the letter to</p> <p>9 Mr. Garavaglia? Either one of them?</p> <p>10 A No.</p> <p>11 Q So your approval of the forced leave</p> <p>12 is not in any way predicated upon proper notice</p> <p>13 being given to the employee; is that a fair</p> <p>14 statement?</p> <p>15 A That's fair.</p> <p>16 Q Okay. Now, the hearing on the forced</p> <p>17 leave, the first forced leave, the one we're</p> <p>18 talking about here on July 2nd; okay? The hearing</p> <p>19 on that before the Civil Service Commission, was</p> <p>20 initially scheduled for July 23rd. Is that</p> <p>21 correct?</p> <p>22 A I'd have to check the dates. I'm --</p> <p>23 I relied on my --</p> <p>24 Q Okay.</p> <p>25 A -- employee to schedule that for me.</p>

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<p>1 Q And -- and which employee would that</p> <p>2 be?</p> <p>3 A At the time, I believe it was Ashley</p> <p>4 McClain.</p> <p>5 Q Okay. Let me direct your attention</p> <p>6 -- oh, boy. Let's see. One, two, three, four,</p> <p>7 five, six, seven, the eighth page of paragraph O,</p> <p>8 which looks like this. You probably recognize</p> <p>9 that.</p> <p>10 A Yeah, is that looks like the --</p> <p>11 (Overtalking - inaudible.)</p> <p>12 A -- Notice of Institution to case?</p> <p>13 MS. HAMILTON: Usually the ones</p> <p>14 before that are (inaudible).</p> <p>15 MR. BLANKE: Here. Counsel?</p> <p>16 MR. NORWOOD: Yep. Got it.</p> <p>17 THE WITNESS: I'm slow, I'm sorry.</p> <p>18 Is it that far in?</p> <p>19 MS. HAMILTON: Eighth page.</p> <p>20 MR. BLANKE: You may be past eight.</p> <p>21 MS. HAMILTON: Yeah.</p> <p>22 MR. BLANKE: Well, it looks like</p> <p>23 this. Let's make sure we're all on the same page.</p> <p>24 THE WITNESS: I know what one looks</p> <p>25 like, I'm --</p>	<p>1 Q We on the same page?</p> <p>2 A Yes.</p> <p>3 Q Okay. Does that provide a hearing</p> <p>4 date?</p> <p>5 A Yes.</p> <p>6 Q And that's July 23rd; correct?</p> <p>7 A Yes.</p> <p>8 Q And the parties were advised of that</p> <p>9 by Ashley McClain, through this notice, on or about</p> <p>10 July 11th. Is that correct?</p> <p>11 MS. HAMILTON: Objection, foundation.</p> <p>12 Q (BY MR. BLANKE) Well --</p> <p>13 MS. HAMILTON: You can answer if you</p> <p>14 know.</p> <p>15 Q (BY MR. BLANKE) -- the email from</p> <p>16 before that, the first -- the page right before</p> <p>17 that with the email that we were talking about?</p> <p>18 A Yeah, that's -- the certificate of</p> <p>19 service does say that.</p> <p>20 Q July 11, okay.</p> <p>21 A Yeah.</p> <p>22 Q What was Ashley McClain? She was an</p> <p>23 administrative assistant, but what was her duties?</p> <p>24 A She served as the administrative</p> <p>25 assistant to the Civil Service Commission.</p>
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<p>1 MR. BLANKE: It says on the top, the</p> <p>2 first one is a caption, it's on City of St. Louis</p> <p>3 stationery and it's --</p> <p>4 MS. HAMILTON: That's the cover.</p> <p>5 Right here. You're -- you're at -- the one that --</p> <p>6 next one. That's the cover.</p> <p>7 THE WITNESS: "In the Matter of."</p> <p>8 Got it. I'm sorry. Okay.</p> <p>9 Q (BY MR. BLANKE) So, so counsel for</p> <p>10 the City is directing your attention to an email</p> <p>11 that precedes what I was talking about, from Ashley</p> <p>12 McClain?</p> <p>13 A Yes.</p> <p>14 Q To Nancy Kistler and Paul Schmitz</p> <p>15 dated July 11; right?</p> <p>16 A Yes.</p> <p>17 Q Saying (Quote as read):</p> <p>18 Please see the attached Notice of</p> <p>19 Hearing.</p> <p>20 Correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And then after that is the</p> <p>23 Notice of Hearing; right? It says Notice of</p> <p>24 Institution of Case and Hearing.</p> <p>25 A Yes.</p>	<p>1 Q Okay. Was she, then, as a secretary</p> <p>2 to the Commission, was she under you in that</p> <p>3 regard?</p> <p>4 A Yes.</p> <p>5 Q Okay. So you were her supervisor?</p> <p>6 A Yes.</p> <p>7 Q In that -- in that capacity?</p> <p>8 A Yes.</p> <p>9 Q Yes. Okay. Were you involved in</p> <p>10 selecting the hearing date in any way?</p> <p>11 A No.</p> <p>12 Q Turn a couple pages down to the page</p> <p>13 -- this one does have a Bates stamp. In the lower</p> <p>14 right-hand corner it's Bates stamped GARAVAGLIA</p> <p>15 110. On the top it's a Memorandum to Nancy Kistler</p> <p>16 from Chana Martin (sic). Do you see that?</p> <p>17 A I do see it.</p> <p>18 Q Okay. And please go to the end of</p> <p>19 that, and there is another memorandum that follows</p> <p>20 that which starts on GARAVAGLIA 105 on the bottom,</p> <p>21 and this is from Darlene Green to Nancy Kistler.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Okay. Did you see either of these</p> <p>25 memorandum at any time before you prepared for this</p>

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<p style="text-align: right;">Page 157</p> <p>1 deposition? I mean when you were a director. Did</p> <p>2 you see either of those? When you were a director.</p> <p>3 When you were the director of the personnel</p> <p>4 department.</p> <p>5 A I don't recall them, no.</p> <p>6 Q You don't recall, or you don't recall</p> <p>7 seeing them?</p> <p>8 A I don't recall seeing them.</p> <p>9 Q Okay.</p> <p>10 A This -- I'm looking at the first one</p> <p>11 still.</p> <p>12 Q Sure. Take your time. So I take it</p> <p>13 if you don't recall seeing them, you don't know</p> <p>14 whether you reviewed them or not; right?</p> <p>15 A I did not review the first one.</p> <p>16 Q Okay.</p> <p>17 A I'm looking at the --</p> <p>18 MS. HAMILTON: 105 at the bottom for</p> <p>19 the second one.</p> <p>20 A I do recall seeing the letter to</p> <p>21 Nancy Kistler from Comptroller Green dated July 12,</p> <p>22 2019. That one I do remember seeing.</p> <p>23 Q (BY MR. BLANKE) And how do you</p> <p>24 recall that?</p> <p>25 A Because it looks familiar.</p>	<p style="text-align: right;">Page 159</p> <p>1 Defendant Green wrote this requesting a forced</p> <p>2 leave at this time, when Mr. Garavaglia was already</p> <p>3 on forced leave?</p> <p>4 A No.</p> <p>5 Q You have no idea?</p> <p>6 A No.</p> <p>7 Q The reasons given in this letter to</p> <p>8 Richard -- to you from Darlene Green are the same</p> <p>9 as the letter that you reviewed on July 2nd.</p> <p>10 Correct?</p> <p>11 A I believe I've already testified that</p> <p>12 I didn't see that.</p> <p>13 MR. NORWOOD: Well, let me --</p> <p>14 Q (BY MR. BLANKE) No, no, no. I'm</p> <p>15 talking about the one you did see.</p> <p>16 MR. NORWOOD: Well, let me object,</p> <p>17 because it assumes he did see it.</p> <p>18 Q (BY MR. BLANKE) Okay, well, then</p> <p>19 maybe I'm mistaken. You -- you obviously saw --</p> <p>20 A No, Counselor. I already testified</p> <p>21 that the first of the two --</p> <p>22 Q Oh, I said did you hear about them.</p> <p>23 A -- on July 2, I did not see that.</p> <p>24 And I -- I did not.</p> <p>25 Q Yeah, I'm -- I'm sorry. I wanted you</p>
<p style="text-align: right;">Page 158</p> <p>1 Q Okay.</p> <p>2 A The contents look familiar.</p> <p>3 Q Do you remember when you may have</p> <p>4 seen it?</p> <p>5 A I can only assume that it was</p> <p>6 sometime around the date that it was issued.</p> <p>7 Q Do you recall any discussions with</p> <p>8 Comptroller Green or anyone in her office about it?</p> <p>9 A No.</p> <p>10 Q Okay. Turn the page again. This is</p> <p>11 the page right after the page GARAVAGLIA 106. So</p> <p>12 it's right after that second memoranda that you did</p> <p>13 see. There's a letter to you, dated July 15, from</p> <p>14 Darlene Green; correct?</p> <p>15 A Yes.</p> <p>16 Q And then if you turn the page,</p> <p>17 there's another letter to you -- I mean then</p> <p>18 there's a letter to Jim Garavaglia from Darlene</p> <p>19 Green as well; right?</p> <p>20 A Yes.</p> <p>21 Q Okay. And these are both dated</p> <p>22 July 15; correct?</p> <p>23 A Yes.</p> <p>24 Q Okay. The letter from Darlene Green</p> <p>25 to you dated July 15, 2019, do you know why</p>	<p style="text-align: right;">Page 160</p> <p>1 to compare the letter that you approved -- okay,</p> <p>2 you obviously saw that one.</p> <p>3 A Yes.</p> <p>4 Q Okay. Yeah. -- with the letter of</p> <p>5 July 15th that we're looking at now.</p> <p>6 MR. NORWOOD: Well, and I'm objecting</p> <p>7 because that assumes he received that July 15 --</p> <p>8 MS. HAMILTON: July 15.</p> <p>9 MR. NORWOOD: -- 2019 letter.</p> <p>10 Q (BY MR. BLANKE) Let me add that</p> <p>11 that's the first question.</p> <p>12 A Yeah.</p> <p>13 Q Did -- did you?</p> <p>14 A I did not receive the July 15th</p> <p>15 letter, no.</p> <p>16 Q And how do you know that?</p> <p>17 A Because I've never seen it. And one</p> <p>18 of the reasons I know is because I didn't know</p> <p>19 anything about any issues that were brought up</p> <p>20 about Muni Court. Or failure to supervise the</p> <p>21 employees. That's not something that was discussed</p> <p>22 with me.</p> <p>23 Q Okay.</p> <p>24 MS. HAMILTON: Is this a good time</p> <p>25 for a break?</p>

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<p>1 MR. BLANKE: If you want one, sure.</p> <p>2 MS. HAMILTON: Yeah, I'd love one.</p> <p>3 MR. BLANKE: Okay.</p> <p>4 MS. HAMILTON: If you don't mind.</p> <p>5 THE VIDEOGRAPHER: Time is 2:12 PM,</p> <p>6 we are off the record.</p> <p>7 (Off the record.)</p> <p>8 THE VIDEOGRAPHER: The time is 2:31,</p> <p>9 we are back on the record.</p> <p>10 Q (BY MR. BLANKE) Okay. Where did we</p> <p>11 leave off. We were looking at this July 15th</p> <p>12 letter to Mr. Garavaglia, that you did not remember</p> <p>13 seeing it, I think?</p> <p>14 A Yes.</p> <p>15 MR. NORWOOD: Let me object, it</p> <p>16 mischaracterizes testimony. He said he didn't see</p> <p>17 it.</p> <p>18 MR. BLANKE: That's what I said.</p> <p>19 MR. NORWOOD: No, you said I don't --</p> <p>20 he didn't remember seeing it, which is different.</p> <p>21 MR. BLANKE: Oh, gotcha. Okay.</p> <p>22 Q (BY MR. BLANKE) Turn the page, there</p> <p>23 is a Certified Mail return there, but turn the page</p> <p>24 again to this email from Linda Thomas to you on</p> <p>25 July 17th at 2:35 PM which begins with the words --</p>	<p>1 including termination.</p> <p>2 Wanted to get this to you while my</p> <p>3 mind is still fresh on what I said so</p> <p>4 people don't misquote me, and know</p> <p>5 you -- and you know what I mean.</p> <p>6 MR. NORWOOD: You know who I mean.</p> <p>7 A Or who I mean, sorry.</p> <p>8 Q (BY MR. BLANKE) First question I</p> <p>9 have about this is, did you advise or suggest to</p> <p>10 Linda Thomas that she instruct Defendant Green to</p> <p>11 withdraw her initial forced leave request?</p> <p>12 A No.</p> <p>13 Q Did she -- did you know that she</p> <p>14 would do that before she did it?</p> <p>15 A No.</p> <p>16 Q Do you know why she did it?</p> <p>17 A After the fact, I believe it was,</p> <p>18 Linda had told me, again, that she had spoken to --</p> <p>19 she had received a phone call from Comptroller</p> <p>20 Green about the procedures for 117 and forced leave</p> <p>21 because the -- there were, um, a couple of clerical</p> <p>22 omissions in the initial letter to Mr. Garavaglia</p> <p>23 about the reason for the forced leave.</p> <p>24 Q Did she say what those additional</p> <p>25 reasons were?</p>
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<p>1 well, that's from you to Linda Thomas on July 17th</p> <p>2 at 2:35, where you're thanking her for the previous</p> <p>3 email from her to you at 2:33. Correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. Can you please read into the</p> <p>6 record what she wrote on the email to you at 2:33?</p> <p>7 A (Quote as read):</p> <p>8 Rick, I told the Comptroller to</p> <p>9 withdraw her request for forced leave</p> <p>10 on JG. All she has to do is ask you</p> <p>11 to withdraw -- ask for you to</p> <p>12 withdraw the request and she has to</p> <p>13 give him a copy and then give him</p> <p>14 back any of his time he has used.</p> <p>15 Then I told her she could send you a</p> <p>16 letter requesting force leave --</p> <p>17 should be forced leave -- force leave</p> <p>18 again, give him a copy, and tell him</p> <p>19 he is being put on forced leave</p> <p>20 pending investigation. The reason</p> <p>21 for the forced leave would be he has</p> <p>22 access to a lot of confidential files</p> <p>23 and computer systems and the</p> <p>24 investigation would lead to</p> <p>25 disciplinary action up to and</p>	<p>1 A Yeah, the serious allegations</p> <p>2 regarding fiscal matters.</p> <p>3 Q But did she specify to you what they</p> <p>4 were?</p> <p>5 A No.</p> <p>6 Q The last sentence, (Quote as read):</p> <p>7 Wanted to get this to you while my</p> <p>8 mind is still fresh on what I said so</p> <p>9 people don't misquote me, and you</p> <p>10 know who I mean.</p> <p>11 What does that mean?</p> <p>12 MR. NORWOOD: Well, let me object,</p> <p>13 calls for speculation on what was in Linda Thomas's</p> <p>14 mind when she sent that email.</p> <p>15 MS. HAMILTON: You can answer.</p> <p>16 A I believe she is referring to Nancy</p> <p>17 Kistler, who is the Deputy City Counselor.</p> <p>18 Q (BY MR. BLANKE) And what's the</p> <p>19 reason for that? Why do you believe that?</p> <p>20 MR. NORWOOD: Let me object,</p> <p>21 irrelevant.</p> <p>22 THE WITNESS: Oh. Oh, sorry.</p> <p>23 MS. HAMILTON: And what I'll just say</p> <p>24 is you are welcome to answer, I just -- do not get</p> <p>25 into any privileged conversations.</p>

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<p>1 A All right. It's just that Nancy was</p> <p>2 -- was assisting Comptroller with the process.</p> <p>3 Q (BY MR. BLANKE) Great.</p> <p>4 A And -- and also discussing it with</p> <p>5 me.</p> <p>6 Q Okay. How confident are you or that</p> <p>7 -- of that?</p> <p>8 A Very confident.</p> <p>9 Q Oh, okay. Now, turn the page again.</p> <p>10 These three pages, the next three pages, are all</p> <p>11 dated July 18, 2019. They all purport to be</p> <p>12 written by Darlene Green to you; correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. What's your under -- take a</p> <p>15 look at these three, take -- take a moment, and</p> <p>16 read them over. And what's if -- what's your</p> <p>17 understanding of the -- what -- why are there three</p> <p>18 -- three of these? What's -- what are the</p> <p>19 differences, or what's -- do you have an</p> <p>20 understanding of --</p> <p>21 A I do.</p> <p>22 Q -- why there are three letters?</p> <p>23 A I do. It all goes back to the</p> <p>24 original conversation I had with Judy Armstrong</p> <p>25 that the reason for the forced leave was that there</p>	<p>1 respect to, when you talk about "those versions,"</p> <p>2 what versions are we talking about?</p> <p>3 Q (BY MR. BLANKE) All right, well, I'm</p> <p>4 not suggesting they're intended to be the same</p> <p>5 letter. I'm just saying there are three letters,</p> <p>6 all dated July 18, from Darlene Green to Richard</p> <p>7 Frank. And my question is --</p> <p>8 MR. NORWOOD: Well, let me --</p> <p>9 Q (BY MR. BLANKE) -- do you have an</p> <p>10 understanding of what those three letters are</p> <p>11 about? That's the first question. You've already</p> <p>12 answered it, I think; right?</p> <p>13 My second question is --</p> <p>14 A Yes.</p> <p>15 Q -- did you see all three of them?</p> <p>16 You know, at the time -- or at or around the time</p> <p>17 they were written, in July?</p> <p>18 A I don't recall seeing, out of those</p> <p>19 three letters, the second one. I do recall seeing</p> <p>20 the one which I initialed.</p> <p>21 Q Okay. The first one is just advising</p> <p>22 you that she's withdrawing her forced leave</p> <p>23 request; correct?</p> <p>24 A Correct.</p> <p>25 Q You don't recall seeing that?</p>
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<p>1 were allegations of serious fiscal improprieties,</p> <p>2 and, you know, um, I had suggested that they should</p> <p>3 include that in the letter of forced leave to</p> <p>4 Mr. Garavaglia.</p> <p>5 Q Now, this is the second letter;</p> <p>6 right? Of forced leave?</p> <p>7 A Yes.</p> <p>8 Q And if you look at the third version,</p> <p>9 again, it has your handwriting approving it on --</p> <p>10 on the same day, 7/18/19.</p> <p>11 MR. NORWOOD: Let me object to the</p> <p>12 reference to the "third version."</p> <p>13 MR. BLANKE: I'm sorry. The third</p> <p>14 letter that we were talking about. Let's see if</p> <p>15 there's any identification on this that I can use.</p> <p>16 Anyway.</p> <p>17 A Yes, I have it.</p> <p>18 Q (BY MR. BLANKE) You approved a</p> <p>19 letter that is addressed to you on July 18 from</p> <p>20 Darlene Green. Correct?</p> <p>21 A Yes.</p> <p>22 Q Is that the only -- the letter that</p> <p>23 has your approval on it, is that the only one of</p> <p>24 those versions that you saw? Or do you know?</p> <p>25 MR. NORWOOD: Let me object with</p>	<p>1 A Yes. I said.</p> <p>2 Q Okay. I'm sorry.</p> <p>3 A The second one is the one I said I</p> <p>4 didn't recall seeing.</p> <p>5 Q Gotcha. The second and third letters</p> <p>6 are -- are -- they might be identical, I don't -- I</p> <p>7 don't even --</p> <p>8 A Pardon me. I just misspoke then,</p> <p>9 sir. I -- I did see -- the second letter is --</p> <p>10 Q The second --</p> <p>11 A -- that you're referring to is</p> <p>12 identical to the third.</p> <p>13 Q Right.</p> <p>14 A Except I -- the third one just</p> <p>15 contains my initials and approval.</p> <p>16 Q Right you are. Okay.</p> <p>17 THE VIDEOGRAPHER: Mr. Frank, could I</p> <p>18 have you flip your mic to the outside of your lapel</p> <p>19 as opposed to the inside?</p> <p>20 THE WITNESS: Oh, dear.</p> <p>21 THE VIDEOGRAPHER: I'm hearing you,</p> <p>22 but it's mushy. There you go.</p> <p>23 THE WITNESS: Haven't gotten any</p> <p>24 smarter after age 60, that's for sure.</p> <p>25 MR. NORWOOD: Well, don't worry, I do</p>

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<p>1 that all the time myself.</p> <p>2 Q (BY MR. BLANKE) Now turn the page</p> <p>3 again.</p> <p>4 A Okay.</p> <p>5 Q And this is a page where it says</p> <p>6 "Letter to James Garavaglia" in bold letters at the</p> <p>7 top?</p> <p>8 A Yes.</p> <p>9 Q It's an email, purports to be an</p> <p>10 email of July 18, 2019, from Darlene -- from Chana</p> <p>11 Martin -- Morton to you. Is that correct?</p> <p>12 A Yes.</p> <p>13 Q And it refers to a letter that she</p> <p>14 claims was hand-delivered to Mr. Garavaglia today,</p> <p>15 meaning July 18th. Is that right?</p> <p>16 A That's what the memo says, yes.</p> <p>17 Q And there is, at the bottom of this</p> <p>18 email there is a -- an indication that it was an</p> <p>19 attachment at -- to the -- to the email; right?</p> <p>20 A Yes.</p> <p>21 Q And then go to the next page, and</p> <p>22 what do you see there?</p> <p>23 A This is the letter notifying</p> <p>24 Mr. Garavaglia that he's being placed on forced</p> <p>25 leave pending an internal investigation into some</p>	<p>1 "improprieties" to strengthen and</p> <p>2 clarify (without being too</p> <p>3 restrictive)? Thanks.</p> <p>4 Q And then above that, there is an</p> <p>5 email from Chana Morton on behalf of Darlene Green</p> <p>6 saying, (Quote as read):</p> <p>7 Please see the attached updated</p> <p>8 request.</p> <p>9 Is that right?</p> <p>10 A Yes.</p> <p>11 Q Were there any oral conversations</p> <p>12 between you and Chana Morton about all of these</p> <p>13 letters, or versions?</p> <p>14 A I believe there was one conversation</p> <p>15 -- two conversations that I had with Chana maybe in</p> <p>16 total. One was the one on Saturday where she</p> <p>17 connected the phone call, and then this one was</p> <p>18 regarding me telling her, you know, that it was</p> <p>19 important to include what we -- we talked about in</p> <p>20 the original conversation on that Saturday before</p> <p>21 July 2nd. That these were serious allegations of</p> <p>22 fiscal impropriety.</p> <p>23 Q Did you have any conversations with</p> <p>24 Darlene Green about this matter?</p> <p>25 A No.</p>
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<p>1 improprieties that have come to light, and advising</p> <p>2 him of his right to use any accumulated leave,</p> <p>3 vacation, or comp time.</p> <p>4 Q And -- and the message here is that</p> <p>5 it was hand-delivered. Right?</p> <p>6 A Yes.</p> <p>7 Q Okay. And if you'll turn the page</p> <p>8 again, and now it says "Revised Request Letter" on</p> <p>9 the top. Are you on that page?</p> <p>10 A Yes.</p> <p>11 Q Okay. Now, this is actually an email</p> <p>12 stream that we're looking at on this page, appears</p> <p>13 to be. At the bottom is an email from Chana Morton</p> <p>14 to you dated July 18 at 2:50 PM?</p> <p>15 A Yes.</p> <p>16 Q And it says, (Quote as read):</p> <p>17 My apologies - please see the</p> <p>18 attached revised letter.</p> <p>19 Correct?</p> <p>20 A Yes.</p> <p>21 Q And then you responded at 2:52 to</p> <p>22 Chana Morton by writing what?</p> <p>23 A (Quote as read):</p> <p>24 Could you also add the word</p> <p>25 "serious" and/or "fiscal" before</p>	<p>1 Q Okay. Then, at 3:24 that afternoon,</p> <p>2 on the very top, you write Comptroller Green back</p> <p>3 saying that you're authorizing the second forced</p> <p>4 leave pending your investigation; correct?</p> <p>5 A Yes.</p> <p>6 Q Now -- hold on one moment. If you go</p> <p>7 back to the letter that you did not see, to James</p> <p>8 Garavaglia dated July 15th, the Certified letter</p> <p>9 I'm talking about.</p> <p>10 A Yes. I have it.</p> <p>11 Q This letter doesn't contain those</p> <p>12 added words about "serious" and "fiscal," does it?</p> <p>13 A No, it does not.</p> <p>14 Q So then the letter dated July 18 to</p> <p>15 you that you approved does contain those words, the</p> <p>16 "serious fiscal improprieties." Correct?</p> <p>17 A Yes.</p> <p>18 Q So the request to you was updated?</p> <p>19 A Yes.</p> <p>20 Q Per your instructions.</p> <p>21 A Yes.</p> <p>22 Q But the letter to Mr. Garavaglia was</p> <p>23 not.</p> <p>24 MR. NORWOOD: Well, let me object --</p> <p>25 MR. BLANKE: Let me ask the question</p>

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<p>1 first.</p> <p>2 MR. NORWOOD: Well, let me object --</p> <p>3 Q (BY MR. BLANKE) Does that seem</p> <p>4 correct to you?</p> <p>5 MR. NORWOOD: Let me object, because</p> <p>6 you say "the letter to Mr. Garavaglia," and it</p> <p>7 assumes facts not in evidence.</p> <p>8 First of all, it's vague and</p> <p>9 ambiguous as to what letter, and it's -- and so if</p> <p>10 you --</p> <p>11 MR. BLANKE: I can correct that very</p> <p>12 easily.</p> <p>13 MR. NORWOOD: I'm sorry -- well,</p> <p>14 please.</p> <p>15 MR. BLANKE: Okay.</p> <p>16 Q (BY MR. BLANKE) So I'm saying that</p> <p>17 the letter that we just talked about of July 15th</p> <p>18 that has a Certified return in back of it --</p> <p>19 MR. NORWOOD: Well, let me object to</p> <p>20 that too --</p> <p>21 (Overtalking - inaudible.)</p> <p>22 Q (BY MR. BLANKE) -- that was provided</p> <p>23 to us by --</p> <p>24 MR. NORWOOD: Let me object to that,</p> <p>25 let me object, because this letter -- there's no</p>	<p>1 evidence.</p> <p>2 MR. NORWOOD: Well, because it's a</p> <p>3 mis -- it's a fact that he never got the letter.</p> <p>4 Because it's not in his file.</p> <p>5 MR. BLANKE: Well, let the record</p> <p>6 reflect that neither the City nor Defendant Green</p> <p>7 has provided us with a letter, other than this one,</p> <p>8 that was sent to Mr. Garavaglia.</p> <p>9 MR. NORWOOD: That's absolutely</p> <p>10 false.</p> <p>11 MS. HAMILTON: Incorrect.</p> <p>12 MR. BLANKE: Oh, really? Where is</p> <p>13 it?</p> <p>14 MR. NORWOOD: Because the letters</p> <p>15 that you provided to us --</p> <p>16 MR. BLANKE: Yeah.</p> <p>17 MR. NORWOOD: -- are from your</p> <p>18 client's files and from the files that Comptroller</p> <p>19 Green did provide to counsel at the Civil Service</p> <p>20 Commission stage. All of which have your Bates</p> <p>21 labels on them.</p> <p>22 MS. HAMILTON: And every -- I'll just</p> <p>23 add --</p> <p>24 MR. BLANKE: So -- so let me.</p> <p>25 THE REPORTER: Wait.</p>
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<p>1 evidence in the record that ties this certification</p> <p>2 to this letter.</p> <p>3 MR. BLANKE: Except that this is how</p> <p>4 it was presented to us by you guys.</p> <p>5 MR. NORWOOD: It -- it -- we don't</p> <p>6 know that either, because it's not Bates stamped.</p> <p>7 So we don't know where this document came from as</p> <p>8 it relates to these --</p> <p>9 MR. BLANKE: They do know.</p> <p>10 MR. NORWOOD: -- two letters. Right?</p> <p>11 MR. BLANKE: Somebody knows, because</p> <p>12 you provided it to us.</p> <p>13 MR. NORWOOD: Well, but let me say</p> <p>14 this, Counsel, because I think -- I don't know if</p> <p>15 it's intentional or inadvertent, but you produced</p> <p>16 records to us, purportedly what you had in your</p> <p>17 files. And your files don't include this letter of</p> <p>18 July 15, 2019 --</p> <p>19 MR. BLANKE: That's right.</p> <p>20 MR. NORWOOD: -- which suggest that</p> <p>21 your client never received it. And so, so that to</p> <p>22 the extent that you're suggesting your client did,</p> <p>23 I think it's improper.</p> <p>24 MR. BLANKE: I see.</p> <p>25 MS. HAMILTON: Because it's not in</p>	<p>1 MS. HAMILTON: -- I'll just add that</p> <p>2 the documents that are in this folder of today,</p> <p>3 Exhibits 2 --</p> <p>4 MR. BLANKE: Yeah.</p> <p>5 MS. HAMILTON: -- through at least 7,</p> <p>6 are Bates stamped, have been exchanged in</p> <p>7 discovery.</p> <p>8 MR. NORWOOD: And the only point I'm</p> <p>9 making, Counsel, is that your client didn't receive</p> <p>10 the letter because in none of the documents you</p> <p>11 produced is this letter part of the mix. And it's</p> <p>12 not Bates stamped with anybody's Bates stamp.</p> <p>13 So I think it's improper for you to</p> <p>14 suggest that there was a letter your client</p> <p>15 received when you can simply talk to your client</p> <p>16 right now, so we can get this straight, to figure</p> <p>17 out whether or not he received it.</p> <p>18 MS. HAMILTON: Well -- well, my -- my</p> <p>19 objection would be that it just is not in evidence;</p> <p>20 right? That --</p> <p>21 MR. BLANKE: This is not a</p> <p>22 conference.</p> <p>23 MS. HAMILTON: So.</p> <p>24 MR. BLANKE: You made -- you've made</p> <p>25 your objections and I'll withdraw the question, and</p>

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<p>1 here is my next question.</p> <p>2 Q (BY MR. BLANKE) If you'll look in</p> <p>3 the Defendant Green's book of exhibits, turn to</p> <p>4 Exhibit Number 7, please.</p> <p>5 A Okay.</p> <p>6 Q That purports to be a letter dated</p> <p>7 July 18 from Darlene Green to James Garavaglia;</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q It says on the letter that it was</p> <p>11 hand-delivered on the 19th. Correct?</p> <p>12 A Yes.</p> <p>13 Q So it says on the letter that it was</p> <p>14 delivered delay – the day after the letter was</p> <p>15 written. Correct?</p> <p>16 A Yes.</p> <p>17 Q Which is mysterious, would you not</p> <p>18 agree?</p> <p>19 MR. NORWOOD: Well, let me object, I</p> <p>20 mean --</p> <p>21 MS. HAMILTON: Calls for speculation</p> <p>22 and is irrelevant.</p> <p>23 Q (BY MR. BLANKE) And it also says on</p> <p>24 the bottom of the letter --</p> <p>25 MR. NORWOOD: Well, hold on a second,</p>	<p>1 MR. NORWOOD: Yeah.</p> <p>2 MS. HAMILTON: Certainly.</p> <p>3 Q (BY MR. BLANKE) The bottom of --</p> <p>4 of this exhibit says "Letter Revised 7/18/19."</p> <p>5 Correct?</p> <p>6 A Yes. That's correct.</p> <p>7 Q Okay. Have you seen this?</p> <p>8 A This letter?</p> <p>9 Q Yes.</p> <p>10 A I believe this letter looks similar,</p> <p>11 I've seen so many letters today. No. This one is</p> <p>12 not one that I -- I saw.</p> <p>13 Q Okay. And how do you know that?</p> <p>14 A Because I didn't see the letters, to</p> <p>15 the best of my recollection, that went to the</p> <p>16 employee. As director of personnel, I only saw</p> <p>17 letters that would come to me asking for the forced</p> <p>18 leave.</p> <p>19 Q Okay. Do you have any personal</p> <p>20 knowledge as to whether this -- this Exhibit</p> <p>21 Number 7 was delivered? Hand-delivered?</p> <p>22 A No, I have no personal knowledge</p> <p>23 about that.</p> <p>24 Q Do you ordinarily review the letters</p> <p>25 to employees notifying him or her that they've been</p>
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<p>1 hold on a second. Are you -- I mean, was that a</p> <p>2 question? We objected. I mean, are you abandoning</p> <p>3 your question?</p> <p>4 Q (BY MR. BLANKE) Oh, I thought you</p> <p>5 answered. Didn't you answer?</p> <p>6 A No, I didn't. I do not believe it's</p> <p>7 mysterious. If you look at the time, you know, I</p> <p>8 caught what I discussed with Chana to be a clerical</p> <p>9 error and not capturing the serious allegations</p> <p>10 which we discussed in the first Saturday, the very</p> <p>11 beginning, and she corrected it but, you know, we</p> <p>12 had the Comptroller and, you know, who, we need to</p> <p>13 sign these things and it was already 3:30 in the</p> <p>14 afternoon.</p> <p>15 So I'm not surprised that this would</p> <p>16 have gotten delivered, hand-delivered, the next</p> <p>17 day.</p> <p>18 MR. BLANKE: No, no, I'm not -- I'm</p> <p>19 not saying it was mysterious that it would have</p> <p>20 been hand-delivered the next day. I'm saying it's</p> <p>21 mysterious that they're saying it was delivered the</p> <p>22 next day before it was delivered.</p> <p>23 A I'm not --</p> <p>24 Q (BY MR. BLANKE) Never mind. It's</p> <p>25 not important.</p>	<p>1 placed on forced leave before you approve it?</p> <p>2 A Never.</p> <p>3 Q Okay. This letter, Exhibit 7, says</p> <p>4 you were copied in on it as well. Correct?</p> <p>5 A Yeah, it does say that I'm copied.</p> <p>6 Q But you did not see it. Is that your</p> <p>7 testimony?</p> <p>8 A I don't recollect it. This is a</p> <p>9 letter that my secretary would have kept.</p> <p>10 Q And you don't ordinarily see them.</p> <p>11 A No, I do not.</p> <p>12 Q Is that because you just don't read</p> <p>13 them, or they're just normally not sent to you? I</p> <p>14 mean, how -- how is it that you don't ordinarily</p> <p>15 see them?</p> <p>16 A With all --</p> <p>17 MR. NORWOOD: Let me object. First</p> <p>18 of all, it's a compound question, I think it's</p> <p>19 badgering this witness. But subject to that.</p> <p>20 MS. HAMILTON: You can answer.</p> <p>21 Q (BY MR. BLANKE) I certainly don't</p> <p>22 mean to badger you. I'm just asking.</p> <p>23 A I worked 7:30 in the morning until 7</p> <p>24 at night, ran two pension systems, was a chief</p> <p>25 negotiator for twelve unions, approved all police</p>

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<p>1 discipline, and up until 2019, reviewed every</p> <p>2 single piece of discipline in this City.</p> <p>3 Q Okay. So it's a fair --</p> <p>4 A And so --</p> <p>5 MS. HAMILTON: You can finish.</p> <p>6 THE WITNESS: Yeah.</p> <p>7 MS. HAMILTON: Carry on.</p> <p>8 A And kept extensive records all the</p> <p>9 way back from 2004 until I left, when we started</p> <p>10 following our retention rules, and kept files on</p> <p>11 numerous matters and legal opinions.</p> <p>12 So I -- I don't mean to be -- it</p> <p>13 sounds a little defensive --</p> <p>14 Q (BY MR. BLANKE) No, but I mean --</p> <p>15 A -- but I just -- there's no way, you</p> <p>16 know, I was doing -- there's like one person who</p> <p>17 runs PRS, one person who runs FRS, and in addition</p> <p>18 to all this, I ran two pension systems that</p> <p>19 performed really well.</p> <p>20 Q So there's no way what?</p> <p>21 A There's no possible way that I could</p> <p>22 keep records of all fitness for duties, or letters</p> <p>23 to individual employees. That -- it's just not --</p> <p>24 Q Well, yeah, I know, but my -- my</p> <p>25 question is -- and, you know, look, if you don't</p>	<p>1 Q One more question about all this.</p> <p>2 A Mm-hmm.</p> <p>3 Q And that is, why did you specifically</p> <p>4 advise the Comptroller's office to put the words</p> <p>5 "serious" and "fiscal" into their request?</p> <p>6 A I think I've answered that but I'll</p> <p>7 answer it again. It's because those were what the</p> <p>8 original allegations were, as explained to me by</p> <p>9 Judy Armstrong on that Saturday before, which she</p> <p>10 said could possibly, if found true, could trigger a</p> <p>11 pre-termination review.</p> <p>12 Q Okay.</p> <p>13 A So, you know, that was the consistent</p> <p>14 thing.</p> <p>15 Q And -- and there was nothing in that</p> <p>16 conversation about Muni Corp; you already testified</p> <p>17 to that?</p> <p>18 A No.</p> <p>19 Q What -- um, let's go to the July 23rd</p> <p>20 letter which, is -- I lost my place.</p> <p>21 A I think I --</p> <p>22 Q From Paul Schmitz, sitting right next</p> <p>23 to me here, Mr. Garavaglia's attorney in the Civil</p> <p>24 Service Commission proceeding, to Ashley McClain.</p> <p>25 MR. NORWOOD: Where is that Counsel?</p>
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<p>1 know, you don't know. I'm not trying to trap you</p> <p>2 or anything. I'm just asking --</p> <p>3 A Well --</p> <p>4 Q -- whether or not you know -- you</p> <p>5 already had testified that you don't remember --</p> <p>6 A Yeah.</p> <p>7 Q -- seeing it or reading it, but my</p> <p>8 question now is simply, do you remember or do you</p> <p>9 know whether you actually received it in your</p> <p>10 office?</p> <p>11 A It would not have come to my</p> <p>12 attention. This type of letter involving</p> <p>13 employees, like fitness for duties or reports on</p> <p>14 fitness for duties, or questions that had to do</p> <p>15 with employees being notified of benefits,</p> <p>16 regarding the benefits section, if it had to do</p> <p>17 with forced leave.</p> <p>18 My secretary, who's retired, Chris</p> <p>19 Dussault (phonetic), would keep a file of all the</p> <p>20 forced leave files. So that's just how the flow of</p> <p>21 paperwork, you know, anything that I had was a</p> <p>22 decision point, you know, I would get, and I</p> <p>23 typically kept a personal copy even though there</p> <p>24 was one in the computer system, and my secretary</p> <p>25 usually had one, so.</p>	<p>1 MR. BLANKE: This is, it says</p> <p>2 GARAVAGLIA 215 on the bottom right. Looks like</p> <p>3 this.</p> <p>4 MR. NORWOOD: Let's start with the</p> <p>5 exhibit number. This Plaintiff's Exhibit O?</p> <p>6 MR. BLANKE: Yes, I'm sorry.</p> <p>7 MR. NORWOOD: And somewhere in here</p> <p>8 there's a --</p> <p>9 MR. BLANKE: Well, it's -- it's</p> <p>10 directly after where we left off with -- with --</p> <p>11 it's the next page --</p> <p>12 (Overtalking - inaudible.)</p> <p>13 MR. BLANKE: -- after the revised</p> <p>14 request letter email.</p> <p>15 A I think I have it, sir.</p> <p>16 MR. NORWOOD: Okay. July 23. All</p> <p>17 right. I'm there.</p> <p>18 MR. BLANKE: Okay.</p> <p>19 Q (BY MR. BLANKE) This letter from</p> <p>20 Paul to Ashley McClain resulted in another hearing</p> <p>21 being scheduled; correct?</p> <p>22 A Yes.</p> <p>23 Q Okay. And that was, hearing was</p> <p>24 scheduled for August 29, 2019. Is that correct?</p> <p>25 A I'll check. That sounds correct.</p>

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<p>1 There should be correspondence from Ashley with the</p> <p>2 institution of case, and yes. I've got that</p> <p>3 exhibit here. So it was scheduled then for</p> <p>4 August 29, 2019.</p> <p>5 Q Okay. Okay. And then if you'll turn</p> <p>6 to the next page, which is an email from Darlene</p> <p>7 Green to you dated August 12, 2019, saying attached</p> <p>8 -- or I'm sorry, it's from Chana Morton saying "See</p> <p>9 the attached letter from Darlene Green" --</p> <p>10 MS. HAMILTON: Where are you?</p> <p>11 A I'm --</p> <p>12 MR. BLANKE: It's the next page.</p> <p>13 Well, this letter from Paul Schmitz is, there's two</p> <p>14 of them, and they're identical, so.</p> <p>15 MR. NORWOOD: Okay. So where are we</p> <p>16 now?</p> <p>17 MR. BLANKE: It's right after that.</p> <p>18 A Is this the request for --</p> <p>19 MR. BLANKE: Just going in order</p> <p>20 here.</p> <p>21 A -- extension of forced leave?</p> <p>22 MR. BLANKE: What's that?</p> <p>23 A I'm sorry, sir. Is this a -- the</p> <p>24 request for extension of forced leave? Maybe I'm</p> <p>25 -- I think I'm in the wrong place.</p>	<p>1 explains it as due to the -- (Quote as read):</p> <p>2 in light of the ongoing investigation</p> <p>3 and pending report from the State</p> <p>4 Auditor's office.</p> <p>5 Q Okay. This would con -- if granted,</p> <p>6 would continue the forced leave beyond the hearing</p> <p>7 date; correct?</p> <p>8 A Yes, it would.</p> <p>9 Q Okay. And then if you turn the page</p> <p>10 again, there is an email from you to Defendant</p> <p>11 Green approving the extension for 30 days from</p> <p>12 August 18th, instead of the date of her request,</p> <p>13 which is August 12th.</p> <p>14 Is that because she requested the</p> <p>15 effective date to begin on August 18th?</p> <p>16 A I'm wondering if it's because the</p> <p>17 original --</p> <p>18 MS. HAMILTON: You can take the time</p> <p>19 to review the letter.</p> <p>20 THE WITNESS: Okay, yeah.</p> <p>21 A I -- I believe because the original</p> <p>22 forced letter -- or approval forced leave letter,</p> <p>23 she -- she asked for 30 days from July 18, 2019.</p> <p>24 And 30 days past July 18, 2019, is August 18, 2019.</p> <p>25 So I was honoring the Comptroller's date of</p>
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<p>1 Q (BY MR. BLANKE) No. No.</p> <p>2 A Okay.</p> <p>3 Q Oh, is it letter for extension? Yes,</p> <p>4 it is, I'm sorry. Yeah. But the -- there's a</p> <p>5 letter -- before that letter of August 12t, there's</p> <p>6 an email from Chana Morton saying attached is the</p> <p>7 letter.</p> <p>8 MS. HAMILTON: Are you talking about</p> <p>9 the email of Monday, August 12, 2019, at 4:45 PM?</p> <p>10 MR. BLANKE: Yes.</p> <p>11 A Now I've got it. Thank you.</p> <p>12 MS. HAMILTON: Okay.</p> <p>13 Q (BY MR. BLANKE) Okay. All that is,</p> <p>14 is just a letter -- an email from Chana Morton</p> <p>15 saying please find attached the letter from Darlene</p> <p>16 Green; right?</p> <p>17 A Yes.</p> <p>18 Q Okay. And then if you turn the page,</p> <p>19 there is the letter from Darlene Green to you dated</p> <p>20 August 12. Correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And what is this letter?</p> <p>23 A This is a letter requesting an</p> <p>24 extension of the forced leave for Mr. Garavaglia</p> <p>25 from July 18 for an additional 30 days, and she</p>	<p>1 request.</p> <p>2 Q (BY MR. BLANKE) Okay. And then turn</p> <p>3 the page again. An email from you to Defendant</p> <p>4 Green approving the extension -- I've already</p> <p>5 talked about this, so this is -- this is that</p> <p>6 approval; right?</p> <p>7 A Yes.</p> <p>8 Q Okay. Very good. And then my</p> <p>9 question is, is that common practice?</p> <p>10 MR. NORWOOD: Is what common</p> <p>11 practice?</p> <p>12 Q (BY MR. BLANKE) To extend 30 days.</p> <p>13 You already testified on direct that it happens a</p> <p>14 lot.</p> <p>15 A Oh, yes.</p> <p>16 Q Yeah, okay. Did you discuss this</p> <p>17 extension with Defendant Green before granting it?</p> <p>18 A No.</p> <p>19 Q Okay. With anyone from her office</p> <p>20 before granting it?</p> <p>21 A No.</p> <p>22 Q Okay. Not Judy Armstrong, not Chana</p> <p>23 Martin -- Morton --</p> <p>24 A No.</p> <p>25 Q I keep saying Martin. I apologize.</p>

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<p style="text-align: right;">Page 189</p> <p>1 Do you know whether or not Defendant Green</p> <p>2 discussed this extension with Linda Thomas?</p> <p>3 A I don't have any direct knowledge of</p> <p>4 that. It would all be speculative.</p> <p>5 Q Now, if I ask you to assume that</p> <p>6 Defendant Green testified under oath that she</p> <p>7 discussed this extension with Linda Thomas and with</p> <p>8 you, would you still disagree with that?</p> <p>9 A I disa --</p> <p>10 MS. HAMILTON: I'm going to object</p> <p>11 that it's an improper hypothetical, but subject to</p> <p>12 that, you can answer to the --</p> <p>13 (Overtalking - inaudible.)</p> <p>14 Q (BY MR. BLANKE) And she did that, by</p> <p>15 the way, on page 193, lines 1 through 3, of her</p> <p>16 deposition. Go ahead.</p> <p>17 MS. HAMILTON: You can answer, sir.</p> <p>18 A I don't remember at all discussing</p> <p>19 specifics of an extension, you know. Linda, I</p> <p>20 know, was originally consulted by the Comptroller</p> <p>21 about the provisions of Administrative Regulation</p> <p>22 117.</p> <p>23 My only recollection about the</p> <p>24 extensions was communication I had with Ashley</p> <p>25 about trying to get forced leave, the forced leave</p>	<p style="text-align: right;">Page 191</p> <p>1 phone call?</p> <p>2 A No. I think what I testified to here</p> <p>3 today was I discussed what the allegations were,</p> <p>4 they were of a --</p> <p>5 Q Right.</p> <p>6 A -- very serious nature, and also that</p> <p>7 they -- they -- I said do you think that this is</p> <p>8 something that could, if crew and true, could</p> <p>9 reasonably lead to, you know, termination,</p> <p>10 dismissal, and Judy Armstrong said yes, you know,</p> <p>11 that the auditors are also very concerned about</p> <p>12 this.</p> <p>13 Q Oh, so she did mention it?</p> <p>14 A Yeah, she mentioned the -- their</p> <p>15 auditors.</p> <p>16 Q In that -- in that Saturday</p> <p>17 conversation?</p> <p>18 A Mm-hmm. I believe so.</p> <p>19 Q Is that the first time you learned</p> <p>20 about an audit?</p> <p>21 A Mm-hmm.</p> <p>22 Q This is an internal audit?</p> <p>23 A Well, not the first time, no. The</p> <p>24 City was going through a City-wide audit of all</p> <p>25 those records. My department was the very first</p>
<p style="text-align: right;">Page 190</p> <p>1 in front of a hearing officer as soon as practical</p> <p>2 because, you know, it's obviously a important issue</p> <p>3 for the employee.</p> <p>4 Q (BY MR. BLANKE) Is it your ordinary</p> <p>5 practice to discuss extensions with the person</p> <p>6 requesting them before you grant the extension?</p> <p>7 A Sometimes.</p> <p>8 Q Sometimes yes; sometimes no?</p> <p>9 A Sometimes no.</p> <p>10 Q Okay. What -- what would -- well,</p> <p>11 okay. Now, why did you grant the extension?</p> <p>12 A I granted the extension because of</p> <p>13 the communication I had received from the</p> <p>14 Comptroller before that the state auditors, you</p> <p>15 know, were involved. I knew that she had planned</p> <p>16 to have them involved from my original conversation</p> <p>17 that I go back to on that Saturday, and the state</p> <p>18 auditors were taking longer, as they often do.</p> <p>19 Q So I understand this, I just want to</p> <p>20 be clear. Did you discuss the audit with -- with</p> <p>21 Defendant Green -- I'm sorry, with --</p> <p>22 A No.</p> <p>23 Q -- Judy Armstrong --</p> <p>24 A No.</p> <p>25 Q -- on the Saturday afternoon con --</p>	<p style="text-align: right;">Page 192</p> <p>1 one, you know, and it would take three or four</p> <p>2 months -- I think it took three or four months to</p> <p>3 get through just my department.</p> <p>4 So it was winding its way through the</p> <p>5 City and the auditors were routinely, you know,</p> <p>6 going through each of the different departments and</p> <p>7 were involved.</p> <p>8 Q Who were these auditors, do you know?</p> <p>9 A Yeah, they were the auditors from</p> <p>10 Jefferson City who worked, you know, directly for</p> <p>11 Nicole Galloway.</p> <p>12 Q Did you ever find out whether or not</p> <p>13 this audit of the Comptroller's office was ever</p> <p>14 completed?</p> <p>15 A No, I don't. I have not read the</p> <p>16 results.</p> <p>17 Q Did you ever find out any results or</p> <p>18 findings of that audit from any source?</p> <p>19 A No.</p> <p>20 Q Did you ever see any requests made to</p> <p>21 the Comptroller's office from the auditors?</p> <p>22 A No.</p> <p>23 Q Did you see -- did you ever see any</p> <p>24 documents or recorded statements of anyone in the</p> <p>25 Comptroller's office made to the auditors?</p>

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<p>1 A No.</p> <p>2 Q Okay. So other than just being told</p> <p>3 that they were being audited, you don't know --</p> <p>4 really know anything about it? About the audit of</p> <p>5 the Comptroller's office?</p> <p>6 A I was told from the Comptroller's</p> <p>7 office, and also from my legal counsel.</p> <p>8 Q You were told what?</p> <p>9 A That the auditor -- state auditors</p> <p>10 were involved.</p> <p>11 Q But I mean nothing more than that?</p> <p>12 A No.</p> <p>13 Q That's my question. Okay. So just</p> <p>14 to be clear, the effect of granting that extension</p> <p>15 was that the hearing scheduled for August 29, the</p> <p>16 Civil Service Commission hearing, on the second</p> <p>17 forced leave request would occur prior to the end</p> <p>18 of the forced leave; correct?</p> <p>19 (Overtalking - inaudible.)</p> <p>20 Q (BY MR. BLANKE) Would occur prior to</p> <p>21 the end of the -- of the second forced leave. You</p> <p>22 gave a 30-day extension on August 18 --</p> <p>23 MR. NORWOOD: Oh, well, let me -- let</p> <p>24 me object because it assumes that there was a</p> <p>25 30-day extension, but subject to that.</p>	<p>1 Q I'm not -- I'm not saying there's</p> <p>2 anything improper about it. I'm just asking</p> <p>3 whether or not that's true?</p> <p>4 A I'm just -- and I'm explaining to</p> <p>5 you, Counselor, that they're two separate things.</p> <p>6 Q Okay. So the answer is yes?</p> <p>7 A Could happen at any time.</p> <p>8 Q Right. So the answer is yes. Right?</p> <p>9 It would --</p> <p>10 MR. NORWOOD: Well, and -- and let me</p> <p>11 just highlight and get your concession --</p> <p>12 MR. BLANKE: I think anybody could</p> <p>13 come --</p> <p>14 MR. NORWOOD: -- that you're not</p> <p>15 suggesting that there's anything improper about it.</p> <p>16 MR. BLANKE: That's right.</p> <p>17 MR. NORWOOD: I mean, I just want to</p> <p>18 make sure she got that.</p> <p>19 MR. BLANKE: You're right, yeah.</p> <p>20 MR. NORWOOD: Is that right, Counsel?</p> <p>21 MR. BLANKE: Because as -- that's</p> <p>22 correct, because as he --</p> <p>23 MR. NORWOOD: Okay.</p> <p>24 MR. BLANKE: -- just testified, it</p> <p>25 happens all the time.</p>
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<p>1 MR. BLANKE: What do you mean? He</p> <p>2 testified that he granted the 30-day extension.</p> <p>3 MR. NORWOOD: He testified that he</p> <p>4 granted the 30-day extension. He didn't testify</p> <p>5 that the Commission granted the 30-day extension.</p> <p>6 MR. BLANKE: I understand that but</p> <p>7 that's not my question.</p> <p>8 Q (BY MR. BLANKE) My question is just</p> <p>9 -- is just whether or not the effect of granting</p> <p>10 the 30-day extension meant that that 30-day</p> <p>11 extension wouldn't expire until after the hearing</p> <p>12 date of August 23rd. Right?</p> <p>13 MR. NORWOOD: Let me object. After</p> <p>14 the scheduled hearing date?</p> <p>15 MR. BLANKE: The scheduled hearing</p> <p>16 date. Right.</p> <p>17 MR. NORWOOD: Okay.</p> <p>18 A They're two independent types of</p> <p>19 processes. You know, the forced leave is granted</p> <p>20 for the period for which it's granted.</p> <p>21 Q (BY MR. BLANKE) Right.</p> <p>22 A You know, we then schedule, you know,</p> <p>23 at a time when we can get a hearing officer, you</p> <p>24 know, an evidentiary hearing, with a low threshold,</p> <p>25 for the meeting --</p>	<p>1 MR. NORWOOD: All right. There we</p> <p>2 go. All right.</p> <p>3 MR. BLANKE: Okay. So, you know, you</p> <p>4 keep reading these motives into my questions and</p> <p>5 it's just -- I'm just asking questions.</p> <p>6 Q (BY MR. BLANKE) Okay. Look at the</p> <p>7 next -- go -- go a couple of pages in to where it</p> <p>8 says GARAVAGLIA 374 on the bottom right. That's</p> <p>9 the Bates stamp number. So it's about three or</p> <p>10 four pages and it's called Motion for Continuance.</p> <p>11 A I have it.</p> <p>12 Q Okay. And that Motion for</p> <p>13 Continuance on the second page is signed by Nancy</p> <p>14 Kistler and dated August 16; is that correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. Did you know about this when</p> <p>17 it was done? When the motion was filed.</p> <p>18 A Yes.</p> <p>19 Q Did you know it was going to be filed</p> <p>20 before it was filed?</p> <p>21 A Yes.</p> <p>22 Q How?</p> <p>23 A Because I was working with Ashley</p> <p>24 McClain and coming up with a schedule for the</p> <p>25 forced leave hearing and Ashley explained to me</p>

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<p style="text-align: right;">Page 197</p> <p>1 that, you know -- and she works with the appointed</p> <p>2 authorities and the legal counsel to make sure that</p> <p>3 there's suitable dates.</p> <p>4 So I heard that this was -- you know,</p> <p>5 they were in the works in terms of trying to come</p> <p>6 up with an amenable date.</p> <p>7 Q Well, we -- you already agreed with</p> <p>8 me that the -- the hearing that was scheduled for</p> <p>9 August 23rd was scheduled on August the 11th;</p> <p>10 correct?</p> <p>11 A Pardon me?</p> <p>12 Q The hearing that was scheduled to</p> <p>13 take place on August 23rd was actually scheduled on</p> <p>14 August the 11th; is --</p> <p>15 MR. SCHMITZ: You mean 29th?</p> <p>16 Q (BY MR. BLANKE) I'm sorry, I meant</p> <p>17 to say 29th.</p> <p>18 A Oh, okay.</p> <p>19 Q It was meant to be -- I'm sorry, I</p> <p>20 apologize.</p> <p>21 MR. NORWOOD: Well, why don't we --</p> <p>22 Q (BY MR. BLANKE) Let's back up.</p> <p>23 (Overtalking - inaudible.)</p> <p>24 MR. BLANKE: I withdraw the whole</p> <p>25 thing.</p>	<p style="text-align: right;">Page 199</p> <p>1 communication at this point in the process was</p> <p>2 fairly limited to working with Ashley and making</p> <p>3 sure that the process is moving forward and the --</p> <p>4 and what I remember telling her is, you know, try</p> <p>5 and get a date as -- as soon as possible. We</p> <p>6 weren't quite sure how this was all going to turn</p> <p>7 out.</p> <p>8 Q (BY MR. BLANKE) When was the hearing</p> <p>9 that was scheduled for August 29th scheduled? When</p> <p>10 was that set? I don't mean when the hearing date</p> <p>11 was set. It was set on August the 29th. But when</p> <p>12 was that date selected?</p> <p>13 MS. HAMILTON: Are you referring to a</p> <p>14 document in this package of miscellaneous things</p> <p>15 here?</p> <p>16 THE WITNESS: Yeah, I don't --</p> <p>17 MR. BLANKE: Yes, but --</p> <p>18 MS. HAMILTON: Is there a page that</p> <p>19 you could point us to with this?</p> <p>20 MR. BLANKE: We've already -- this</p> <p>21 testimony has already occurred. I don't know why</p> <p>22 this is so hard.</p> <p>23 MR. NORWOOD: We're trying to follow</p> <p>24 the ball on this.</p> <p>25 MS. HAMILTON: This packet and these</p>
<p style="text-align: right;">Page 198</p> <p>1 (Overtalking - inaudible.)</p> <p>2 MR. BLANKE: I'm withdrawing the</p> <p>3 question.</p> <p>4 A Sorry, it's getting late in the day.</p> <p>5 Pardon me.</p> <p>6 Q (BY MR. BLANKE) Me too, and I think,</p> <p>7 you know, I -- that's what's going on here. It's</p> <p>8 not that I'm trying to trap you. It's just because</p> <p>9 I confuse myself sometimes.</p> <p>10 But at any rate, the -- the hearing</p> <p>11 that was scheduled before the Civil Service</p> <p>12 Commission on August 29th was set -- was set long</p> <p>13 before this motion for continuance was filed.</p> <p>14 A Correct.</p> <p>15 Q Okay. So my question is, and you may</p> <p>16 have answered it already correctly, that you knew</p> <p>17 about the Motion for Continuance prior to the time</p> <p>18 it was filed. Correct?</p> <p>19 MR. NORWOOD: Well, I think --</p> <p>20 objection, I think that mischaracterizes testimony.</p> <p>21 MR. BLANKE: I don't think so but</p> <p>22 maybe you're right. I don't know. That's why I'm</p> <p>23 asking again.</p> <p>24 A I guess I don't know. I'm not an</p> <p>25 attorney, if you call this hearsay, but my</p>	<p style="text-align: right;">Page 200</p> <p>1 questions.</p> <p>2 MR. BLANKE: No, that's why I'm</p> <p>3 asking the question.</p> <p>4 Q (BY MR. BLANKE) My question is, once</p> <p>5 again, for the third time, when was the August 29th</p> <p>6 hearing date selected?</p> <p>7 A I would have to have something in</p> <p>8 front of me because, again, that's not -- that was</p> <p>9 not my job. I did not set the hearing dates. I</p> <p>10 asked my administrative assistant to the Civil</p> <p>11 Service Commission who has numerous hearing dates,</p> <p>12 you know, set with all six of our hearing -- or</p> <p>13 what were six of our hearing officers.</p> <p>14 So in this case in particular, you</p> <p>15 know, there -- there was a lot of different things</p> <p>16 in play so I was not sure, in terms of when it was</p> <p>17 set and it's not something that normally would be</p> <p>18 brought to my attention anyway unless I were called</p> <p>19 as a -- a witness or somehow personally involved.</p> <p>20 Q Okay. Then if you'll turn the page</p> <p>21 about two or three pages, you'll see an Order from</p> <p>22 Thomas Frawley. There are actually two of them.</p> <p>23 They're both dated on August the 22nd, but I'm</p> <p>24 talking about the shorter Order which is the second</p> <p>25 one that appears here that reads, (Quote as read):</p>

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<p>1 Under Administrative Regulation 2 Number 117, an employee must be -- 3 placed on forced leave may elect to 4 -- I'm sorry. 5 Under Administrative Regulation 6 Number 117, an employee placed on 7 forced leave may elect to be placed 8 on vacation leave, but if the forced 9 leave is disapproved, the employer 10 (sic) will not be restored his 11 vacation leave. 12 A Right. 13 Q (Quote as read): 14 Therefore, the Appointing Authority's 15 Motion for Continuance shall be and 16 hereby is denied. 17 And that's dated August 22nd. 18 Correct? 19 A Yes. 20 Q Okay. So as a result of that Order 21 from the hearing officer, the hearing for 22 August 29th was still going to take place? 23 A Based on this, yes. 24 Q Yes. Okay. Now, if you'll turn the 25 page again, there are -- there is a -- there is</p>	<p>1 particular about Mr. Garavaglia's case, any 2 questions that, if I did answer anything, would 3 have just been, you know, procedural in nature and 4 like how do you do this. 5 I mean, I think that was sort of like 6 the gist of -- of, according to my conversation 7 with -- with Linda, which I followed up after I got 8 the memo and thanked her, I said, you know, what -- 9 what's going on with this, you know, what did you 10 say to the Comptroller, what's going on? 11 And she goes, I actually received a 12 phone call from her. She wanted to know about the 13 process for forced leave. Which isn't uncommon. 14 We get a lot of questions about forced leave and 15 how it works, and so it would have just been in 16 general terms about, you know, extension of forced 17 leaves and sometimes they -- the appointing 18 authorities ignore me anyway, so. 19 Q What do you mean by that? How do 20 they -- how do they ignore you anyway? 21 A Well, be prior to the change in 22 October of 2019 -- actually September of 2019, that 23 squarely placed all police division employees under 24 civil service in the department of personnel, 25 administrative regulations under the collective</p>
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<p>1 several different memorandums that follow. 2 The first in order here is a 3 memorandum to Paul Schmitz from Darlene Green dated 4 August 27th. That's a one-page memorandum. Do you 5 see that? 6 A Yes. 7 Q Okay. And then the second in order 8 here is an earlier memorandum from the previous day 9 of August 26 to Judy -- from Judy Armstrong to 10 Darlene Green, and that's two pages long; correct? 11 A I see that, yes. 12 Q And then the third is a document 13 dated also on August the 26th from Comptroller 14 Darlene Green but not addressed to anyone in 15 particular. Correct? 16 A Yeah. I see that. 17 Q Okay. Did you ever see these? 18 A No. 19 Q This the first time you saw them? 20 A Yes. 21 Q Okay. Did you have any discussions 22 with anyone in the Comptroller's office about the 23 request to withdraw the second forced leave before 24 that request was made in writing? 25 A I don't remember anything in</p>	<p>1 bargaining agreement and police manual, it was not 2 necessary for the Police Commissioner to ask 3 permission to place a commissioned officer on 4 forced leave. He had the authority to do it. 5 And I told them on numerous 6 occasions, you don't have to send me this and every 7 month I would get a request for an extension from 8 people. So it's just kind of typical that -- not 9 typical but sometimes in -- with forced leave, 10 people were very careful and they would ask either 11 myself or my secretary, Chris, or Linda, or 12 personnel services, that they were doing forced 13 leave correctly. 14 Q Okay. Following these three 15 memoranda that you did not see, okay, is four 16 subpoenas. 17 A Mm-hmm. 18 Q Subpoenas Duces Tecum they're called. 19 One's to the Comptroller's Office, another is to 20 the Department of Personnel, and another is to you 21 personally, and another is to Defendant Green 22 personally. 23 How do these get issued? Well, first 24 of all, as the secretary to the Commission, do you 25 know how they get issued?</p>

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<p>1 A Yeah, I have subpoena power, the</p> <p>2 Commission does not. So, you know, I would have to</p> <p>3 authorize by my signature any, um, you know,</p> <p>4 Subpoena Duces Tecum or my designee in my absence.</p> <p>5 I may have erred because I don't know that with</p> <p>6 forced leave hearings, which have a different</p> <p>7 standard of -- of proof that Subpoena Duces Tecums</p> <p>8 are actually issued.</p> <p>9 But under normal circumstances, you</p> <p>10 know, I review the subpoena, make sure that</p> <p>11 they're, you know, properly worded and signed, and</p> <p>12 every once in a while we'll run into an issue where</p> <p>13 I -- you know, if it's outside the City of</p> <p>14 St. Louis, we might have to go to Circuit Court to</p> <p>15 get them enforced.</p> <p>16 Q So were you aware of any motions made</p> <p>17 by Nancy Kistler to quash any of these subpoenas?</p> <p>18 A I may have read it. I don't recall</p> <p>19 all of it.</p> <p>20 Q Okay. You -- you signed them,</p> <p>21 though; right?</p> <p>22 A Yes. I believe I did.</p> <p>23 Q So that's your approval that the</p> <p>24 subpoena is issued; correct?</p> <p>25 A Yes. Which would, if she felt that</p>	<p>1 Q Yeah, so he made an order on August</p> <p>2 22nd, in addition to his motion -- in addition to</p> <p>3 denying the continuance, he also ruled on the</p> <p>4 Motion to Quash the Subpoenas?</p> <p>5 A That's correct.</p> <p>6 Q And he partially granted them and</p> <p>7 partially denied the motions; right?</p> <p>8 A Yes.</p> <p>9 Q Okay. So some were proper; some were</p> <p>10 not. Right?</p> <p>11 A Correct.</p> <p>12 Q Okay. So, now, turn the page again</p> <p>13 after this, after the subpoenas; okay? And there</p> <p>14 is a letter from Darlene Green to you dated</p> <p>15 August 28, 2019. August 28th is the day, the day,</p> <p>16 prior to the scheduled evidentiary hearing before</p> <p>17 the Service -- Civil Service Commission on the</p> <p>18 second forced leave. Correct?</p> <p>19 MS. HAMILTON: Have you got it?</p> <p>20 A I don't think I -- I've got the</p> <p>21 pre-termination hearing.</p> <p>22 Q (BY MR. BLANKE) You've gone too far.</p> <p>23 MS. HAMILTON: August 28.</p> <p>24 A I'm up to August 28, isn't it?</p> <p>25 Q (BY MR. BLANKE) Yep. Back up. Back</p>
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<p>1 they were improper, overly broad, it's burdensome</p> <p>2 you know, she then has the responsibility, you</p> <p>3 know, to file a Motion to Quash.</p> <p>4 And outside of granting an initial</p> <p>5 continuance on a hearing, all other motions for an</p> <p>6 evidentiary hearing need to be ruled on by the</p> <p>7 hearing officer who is an attorney, so.</p> <p>8 Q And that happened in this case,</p> <p>9 didn't it?</p> <p>10 A Yes, it did.</p> <p>11 Q Well, let me just go back and --</p> <p>12 A And Judge Frawley --</p> <p>13 Q And just before that Motion for</p> <p>14 Continuance that you were looking at earlier is a</p> <p>15 Motion to Quash Subpoenas?</p> <p>16 A Yeah.</p> <p>17 Q Made by Nancy Kistler. And then just</p> <p>18 to refresh your recollection, I'm just --</p> <p>19 A Sorry.</p> <p>20 Q -- asking you to glance over that.</p> <p>21 A Yeah, this is with Judge Frawley</p> <p>22 getting back at me and telling me I made an error</p> <p>23 probably.</p> <p>24 Q Well, partially; right?</p> <p>25 A Yeah.</p>	<p>1 up.</p> <p>2 A Back up? Okay.</p> <p>3 Q Yeah.</p> <p>4 MS. HAMILTON: After the subpoenas.</p> <p>5 Q (BY MR. BLANKE) Looks like this.</p> <p>6 A Yeah, I'm sorry.</p> <p>7 MS. HAMILTON: I'm holding it up to</p> <p>8 him.</p> <p>9 Q (BY MR. BLANKE) That's okay.</p> <p>10 A Right in between the two. I see it</p> <p>11 now. I'm sorry. Thank you.</p> <p>12 Q My first question is an easy one.</p> <p>13 That that date of August 28, 2019, is the actual --</p> <p>14 is the day before the scheduled Civil Service</p> <p>15 Commission hearing of August 29th; right?</p> <p>16 A Mm-hmm. Yes, sir.</p> <p>17 Q Okay. And this letter purports to</p> <p>18 withdraw her request for forced leave; is that</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q And that would be the second time</p> <p>22 that she withdrew it?</p> <p>23 A Yes.</p> <p>24 Q Now, in this letter to you from</p> <p>25 Defendant Green, she states that she'd like to</p>

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<p style="text-align: right;">Page 209</p> <p>1 withdraw the request that she made on July 18, 2 2019. Do you see that?</p> <p>3 A Yes.</p> <p>4 Q But she didn't make the request on 5 July 18, 2000 -- on August 18, 2019. She made it 6 on August 12, 2019. Correct?</p> <p>7 A Yes. I think --</p> <p>8 MS. HAMILTON: I'm -- wait a minute.</p> <p>9 A I think that's -- we've already 10 talked about why the extension went to --</p> <p>11 Q (BY MR. BLANKE) Yeah.</p> <p>12 A -- August 18 --</p> <p>13 MS. HAMILTON: I just think you 14 said --</p> <p>15 A -- instead of August 12th.</p> <p>16 MS. HAMILTON: -- the wrong dates.</p> <p>17 THE WITNESS: Yeah, I know it --</p> <p>18 MS. HAMILTON: I'm going to say that 19 again. I think you got the wrong dates.</p> <p>20 MR. NORWOOD: You said July 12th.</p> <p>21 MR. BLANKE: I did? Okay. I'll say 22 it again.</p> <p>23 A August 12th, 2019.</p> <p>24 Q (BY MR. BLANKE) So -- so -- yeah.</p> <p>25 MS. HAMILTON: Yeah, let's just do</p>	<p style="text-align: right;">Page 211</p> <p>1 Q Now, this letter from Ashley goes to 2 the two attorneys. My question now is, do you have 3 any reason to believe that Darlene Green knew that 4 this was the case before she made her motion to 5 withdraw her second forced leave request?</p> <p>6 MR. NORWOOD: Objection. Vague and 7 ambiguous. Knew what -- what was the case?</p> <p>8 Q (BY MR. BLANKE) Do you have any 9 reason to believe that she would have known that by 10 withdrawing her second request for forced leave, 11 that this hearing would have been -- would not have 12 taken place --</p> <p>13 MS. HAMILTON: And I would --</p> <p>14 Q (BY MR. BLANKE) -- as a result of 15 that second leave being withdrawn?</p> <p>16 MS. HAMILTON: And I would just 17 object to the extent that you might be getting into 18 attorney-client privilege information and instruct 19 the witness, again --</p> <p>20 MR. BLANKE: What do you mean?</p> <p>21 MS. HAMILTON: -- not to get into any 22 privileged conversations.</p> <p>23 Q (BY MR. BLANKE) Okay. Other than 24 that.</p> <p>25 A Yeah, I really don't have a -- a</p>
<p style="text-align: right;">Page 210</p> <p>1 that one again.</p> <p>2 MR. BLANKE: Oh, I see what you mean.</p> <p>3 Yeah, okay.</p> <p>4 Q (BY MR. BLANKE) Yeah, so she refers 5 to her letter dated July 18th and it was actually 6 July 12th. Is that correct? But it was to be 7 effective July 18th. We've talked about that.</p> <p>8 A Yes.</p> <p>9 Q Right. But her letter was actually 10 July 12th?</p> <p>11 A Yeah, I -- I agree with you on that.</p> <p>12 Q Okay. Okay. Now, turn the page yet 13 again, and there's a letter from Ashley McClain to 14 the two attorneys, Nancy Kistler and Paul Schmitz. 15 And what -- what is -- what is Ashley purporting to 16 do here? What is she advising here?</p> <p>17 A She's advising that due to the fact 18 that the Comptroller has requested to withdraw the 19 forced leave, that the -- there's no reason for the 20 hearing. I mean, the hearing would -- would have 21 been null and void because Mr. Garavaglia would 22 have been made whole by virtue of the fact that the 23 forced request dating all the way back to that date 24 of July 12, I guess it was or whatever, whenever -- 25 he -- he would be made whole as of that date.</p>	<p style="text-align: right;">Page 212</p> <p>1 response to that. I mean, I would decline to 2 respond because it was based on, um -- any 3 knowledge I had would be based on my communications 4 with -- with Deputy City Counselor, Nancy Kistler.</p> <p>5 Q I think you maybe misunderstand that 6 question. I'm not asking you anything about the 7 City Counselor's office at all. I'm asking you 8 whether or not you have any reason to believe that 9 the Comptroller would have known that the effect of 10 withdrawing the forced leave would have resulted in 11 the cancellation of the hearing.</p> <p>12 MS. HAMILTON: And I think his answer 13 is that you're asking him to reveal substance of 14 conversations that he had with Nancy Kistler. Did 15 you hear him?</p> <p>16 MR. NORWOOD: She can read it back.</p> <p>17 Q (BY MR. BLANKE) Why -- why would 18 Nancy -- that you had with Nancy Kistler?</p> <p>19 A Yes.</p> <p>20 Q So you didn't know that yourself, 21 that it would result in the -- in the cancellation 22 of the hearing?</p> <p>23 MS. HAMILTON: That wasn't the 24 question.</p> <p>25 MR. NORWOOD: That wasn't --</p>

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<p>1 A You weren't asking me.</p> <p>2 MS. HAMILTON: That wasn't your</p> <p>3 question.</p> <p>4 Q (BY MR. BLANKE) Why would you have</p> <p>5 learned --</p> <p>6 MS. HAMILTON: Your question was</p> <p>7 about --</p> <p>8 MR. BLANKE: Oh, I see. I see.</p> <p>9 A The rest of it, pardon me, is</p> <p>10 speculative.</p> <p>11 (Overtalking - inaudible.)</p> <p>12 MR. BLANKE: So -- so, you know,</p> <p>13 okay, you know, this is ridiculous. This</p> <p>14 attorney-client privilege has no application to</p> <p>15 this question at all.</p> <p>16 Q (BY MR. BLANKE) If -- if you -- so</p> <p>17 -- so it's your testimony that -- that you're --</p> <p>18 you don't want to answer this question because of</p> <p>19 what Nancy Kistler may have told Darlene Green; is</p> <p>20 that what --</p> <p>21 MS. HAMILTON: And you can --</p> <p>22 Q (BY MR. BLANKE) -- you're saying?</p> <p>23 MS. HAMILTON: And you can --</p> <p>24 Q (BY MR. BLANKE) Is -- is that right?</p> <p>25 MS. HAMILTON: You can read back his</p>	<p>1 THE REPORTER: I have talk from</p> <p>2 Ms. Hamilton, Mr. Norwood, that -- but I don't have</p> <p>3 an answer.</p> <p>4 MS. HAMILTON: Maybe he asked the</p> <p>5 same question twice, but I heard him answer that</p> <p>6 question. So.</p> <p>7 Q (BY MR. BLANKE) So can you answer --</p> <p>8 MR. NORWOOD: Well, why don't you</p> <p>9 answer -- ask it again, so we can object again, so</p> <p>10 we can be confused again, by your question. But go</p> <p>11 ahead.</p> <p>12 MR. BLANKE: You can read back the</p> <p>13 question another time.</p> <p>14 MS. HAMILTON: Oh, my God.</p> <p>15 MR. BLANKE: I don't want to rephrase</p> <p>16 it. We'll be talking about three different things.</p> <p>17 THE REPORTER: "I'm asking you</p> <p>18 whether or not you have any reason to believe that</p> <p>19 the Comptroller would have known that the effect of</p> <p>20 withdrawing the forced leave would have resulted in</p> <p>21 the cancellation of the hearing."</p> <p>22 MS. HAMILTON: And my objection is</p> <p>23 that to the extent that the conversation anything</p> <p>24 that is attorney-client privileged, I would</p> <p>25 instruct the witness not to answer. I would also</p>
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<p>1 answer to the prior question. Could you read back</p> <p>2 his answer to the prior question, please?</p> <p>3 THE REPORTER: Which question?</p> <p>4 MS. HAMILTON: The prior -- the one</p> <p>5 immediately prior to this.</p> <p>6 THE REPORTER: "I'm asking you</p> <p>7 whether or not you have any reason to believe that</p> <p>8 the Comptroller would have known that the effect of</p> <p>9 withdrawing the forced leave would have resulted in</p> <p>10 the cancellation of the hearing."</p> <p>11 MS. HAMILTON: I'm sorry, the answer</p> <p>12 to the question, sorry.</p> <p>13 THE REPORTER: There wasn't an</p> <p>14 answer. That's when you all started --</p> <p>15 MR. NORWOOD: And then there was an</p> <p>16 answer that following.</p> <p>17 THE WITNESS: May I answer this?</p> <p>18 MR. NORWOOD: Well, no, no, no --</p> <p>19 (Overtalking - inaudible.)</p> <p>20 THE WITNESS: -- ordering me not to,</p> <p>21 I'm confused.</p> <p>22 MR. BLANKE: That's the only question</p> <p>23 I asked.</p> <p>24 MR. NORWOOD: Hold on, hold on,</p> <p>25 let's --</p>	<p>1 object that it calls for speculation. Subject to</p> <p>2 that, you can answer.</p> <p>3 MR. NORWOOD: Unless it would breach</p> <p>4 the attorney-client privilege.</p> <p>5 A I think it would breach it because it</p> <p>6 was a matter that I discussed with the City</p> <p>7 Counselor, and I routinely discussed --</p> <p>8 MS. HAMILTON: And that's --</p> <p>9 Q (BY MR. BLANKE) Let me ask this</p> <p>10 question. Did you know before the -- as -- as the</p> <p>11 secretary to the Commission and the director of the</p> <p>12 Department of Personnel, when a forced leave</p> <p>13 request is withdrawn and a Civil Service Commission</p> <p>14 has already been scheduled for that forced leave,</p> <p>15 does that have the effect of canceling the hearing?</p> <p>16 A Yes, it does.</p> <p>17 Q And how did you know that?</p> <p>18 A Because that's policy -- I mean</p> <p>19 that's just procedure. I mean, there's no --</p> <p>20 Q Where does it come from, that</p> <p>21 procedure?</p> <p>22 A The evidentiary hearing process</p> <p>23 outlines, you know, what would happen and there's</p> <p>24 no matter at -- at contest anymore. There -- it's</p> <p>25 gone. It's null and void.</p>

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<p style="text-align: right;">Page 217</p> <p>1 Q And that should be apparent to</p> <p>2 anybody, wouldn't you agree?</p> <p>3 A I would agree to that.</p> <p>4 Q So would you agree that Darlene</p> <p>5 Green, being anybody, would have known that, even</p> <p>6 aside from whatever she may have learned from the</p> <p>7 Counselor's office?</p> <p>8 (Overtalking - inaudible.)</p> <p>9 MS. HAMILTON: I object that it calls</p> <p>10 for speculation.</p> <p>11 THE WITNESS: Yeah.</p> <p>12 MR. NORWOOD: Yes.</p> <p>13 MS. HAMILTON: Subject to that, you</p> <p>14 can answer.</p> <p>15 A I would say it's speculative. I have</p> <p>16 seen attorneys who have misspelled and -- and</p> <p>17 misnumbered things. I have seen plenty of</p> <p>18 engineers with Master's degrees who can't</p> <p>19 understand simple provisions. So it would be</p> <p>20 speculative.</p> <p>21 I mean, I've already testified with</p> <p>22 all due deference to Comptroller Green's financial</p> <p>23 acumen. I've already testified she asked about</p> <p>24 routine procedures of forced leave from Ms. Thomas.</p> <p>25 This was a complex one, so that's my answer.</p>	<p style="text-align: right;">Page 219</p> <p>1 A Absolutely.</p> <p>2 Q -- and it gets done. When she says</p> <p>3 she wants to withdraw it, it's withdrawn,</p> <p>4 basically?</p> <p>5 A Yes.</p> <p>6 Q You're just acknowledging the fact.</p> <p>7 A Yes.</p> <p>8 Q Okay. And once again, and I</p> <p>9 apologize if I -- if this was asked already. I</p> <p>10 just don't remember the answer if you did. Did you</p> <p>11 have any discussions with Defendant Green or anyone</p> <p>12 in her office about the request to withdraw this</p> <p>13 forced -- the second forced leave?</p> <p>14 MR. NORWOOD: Objection --</p> <p>15 Q (BY MR. BLANKE) Any oral</p> <p>16 conversations?</p> <p>17 MR. NORWOOD: Objection, asked and</p> <p>18 answered.</p> <p>19 Q (BY MR. BLANKE) Subject to that.</p> <p>20 A I -- my recollection is that the two</p> <p>21 people with whom I had conversations with about the</p> <p>22 withdrawal of the forced leave were Nancy Kistler</p> <p>23 and Ashley McClain.</p> <p>24 Q That's it?</p> <p>25 A That's, yeah, to the best of my</p>
<p style="text-align: right;">Page 218</p> <p>1 Q (BY MR. BLANKE) Let me ask you this.</p> <p>2 Do you have -- I see that you approved both of the</p> <p>3 withdrawals of the forced leave that she asked for.</p> <p>4 Correct?</p> <p>5 MS. HAMILTON: I would object that</p> <p>6 that mischaracterizes --</p> <p>7 Q (BY MR. BLANKE) That's not correct?</p> <p>8 MS. HAMILTON: -- the witness's</p> <p>9 testimony.</p> <p>10 A It's not correct because it's a --</p> <p>11 it's not even like a writ of mandamus kind of</p> <p>12 issue. It's -- it's just a formal recognition is</p> <p>13 all.</p> <p>14 Q That was my next question.</p> <p>15 A Yeah.</p> <p>16 Q You don't have to approve that?</p> <p>17 That's something --</p> <p>18 A No, I don't have to.</p> <p>19 Q Right.</p> <p>20 A She could rescind it at any time.</p> <p>21 Q Right.</p> <p>22 A That's -- that's not under my</p> <p>23 control.</p> <p>24 Q So that's something that she did on</p> <p>25 her own and --</p>	<p style="text-align: right;">Page 220</p> <p>1 recollection.</p> <p>2 Q Okay. Do you know whether Linda</p> <p>3 Thomas or Ashley McClain had any conversations with</p> <p>4 anyone in the Comptroller's office about their</p> <p>5 withdrawal of the second forced leave?</p> <p>6 A I don't know, sir.</p> <p>7 Q Okay. Let's -- let's go to the black</p> <p>8 book. Which has in it the pre-termination letter</p> <p>9 which is --</p> <p>10 MR. NORWOOD: Tab 10.</p> <p>11 MR. BLANKE: Thank you. Tab 10.</p> <p>12 (Overtalking - inaudible.)</p> <p>13 Q (BY MR. BLANKE) This letter is the</p> <p>14 pre-termination letter --</p> <p>15 MR. NORWOOD: Well, just for -- for</p> <p>16 the record, we're talking about Frank --</p> <p>17 Q (BY MR. BLANKE) Exhibit 10.</p> <p>18 MR. NORWOOD: -- Depo Exhibit 10.</p> <p>19 MR. BLANKE: That's correct.</p> <p>20 A Thank you.</p> <p>21 Q (BY MR. BLANKE) This letter, on the</p> <p>22 third page, which is Bates numbered STL001310,</p> <p>23 shows on the bottom that a copy was sent to you.</p> <p>24 Correct?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">Page 221</p> <p>1 Q Okay. And did you receive it and</p> <p>2 read it?</p> <p>3 A Yes.</p> <p>4 Q Okay. Do you remember when,</p> <p>5 approximately?</p> <p>6 A I remember it was after it was</p> <p>7 already delivered to -- or sent, I should say, to</p> <p>8 -- and dated to Mr. Garavaglia. I had no input or</p> <p>9 knowledge of any of the specific contents of it</p> <p>10 prior to that.</p> <p>11 Q Did you discuss all of these charges</p> <p>12 that are contained in this letter with Defendant</p> <p>13 Green or anyone in her office?</p> <p>14 A No.</p> <p>15 Q Do you know whether Ashley -- excuse</p> <p>16 me. Do you know whether Linda Thomas ever</p> <p>17 discussed these charges that are contained in the</p> <p>18 pre-termination letter with -- with anyone in the</p> <p>19 Comptroller's office?</p> <p>20 A Ms. Thomas, um, explained to me, when</p> <p>21 she heard that I had a deposition this week, that</p> <p>22 she only discussed with Comptroller Green the</p> <p>23 procedures as outlined in Administrative Regulation</p> <p>24 117 and none of the specifics.</p> <p>25 Q How about anyone else in your office?</p>	<p style="text-align: right;">Page 223</p> <p>1 scheduling it, et cetera.</p> <p>2 And so, you know, that kind of</p> <p>3 cross-communication, other than just discussion of</p> <p>4 policies and procedures, would -- would be outside</p> <p>5 of something we would get involved with.</p> <p>6 Q What -- what about Linda Thomas?</p> <p>7 Would it have been improper for her to discuss</p> <p>8 these allegations?</p> <p>9 MR. NORWOOD: Well, let me -- let me</p> <p>10 object on the term "improper" because it's vague</p> <p>11 and ambiguous and could call for a legal</p> <p>12 conclusion.</p> <p>13 Q (BY MR. BLANKE) Well, improper for</p> <p>14 any reason because I -- I'm just picking that up</p> <p>15 from what you said in your answer that you thought</p> <p>16 that it would have -- maybe you were just referring</p> <p>17 to Ashley McClain.</p> <p>18 A I was referring to Ashley McClain and</p> <p>19 myself as secretary, I wear different hats. Admin</p> <p>20 Q Right.</p> <p>21 A So while I might review a</p> <p>22 pre-termination packet to make sure that it</p> <p>23 complies with Admin Reg 117 fully and the tenets of</p> <p>24 due process, you know, I'm not looking to see if</p> <p>25 they've proved up the charges or et cetera. That's</p>
<p style="text-align: right;">Page 222</p> <p>1 Did anybody else in your office, to the best of</p> <p>2 your knowledge, discuss the contents of the</p> <p>3 allegation -- the charges against Mr. Garavaglia</p> <p>4 that are contained in Exhibit Number 10?</p> <p>5 A None to my knowledge, and I have</p> <p>6 every confidence and belief that my former</p> <p>7 administrative assistant, Ashley McClain, would not</p> <p>8 have discussed them. She had impeccable sense of</p> <p>9 integrity and propriety and a long history of legal</p> <p>10 background, so I -- I -- I have no reason to</p> <p>11 believe she would have discussed any specifics</p> <p>12 about this. And --</p> <p>13 Q Why -- why -- do you -- that sort of</p> <p>14 suggests to me that you think it would have been</p> <p>15 improper for her to do that. Is -- is that what</p> <p>16 you're saying?</p> <p>17 A Be -- I would say that because we</p> <p>18 don't get into -- it's not our job to be the</p> <p>19 adjudicator --</p> <p>20 Q Okay.</p> <p>21 A -- you know, of an appeal to the</p> <p>22 Commission. She's there to assist the -- the</p> <p>23 judicial officer -- I'm sorry, the quasi-judicial</p> <p>24 officer, the hearing officer, in terms of trans --</p> <p>25 you know, taking the tape, transcribing it,</p>	<p style="text-align: right;">Page 224</p> <p>1 my role as director of personnel.</p> <p>2 As secretary, I'm just making sure</p> <p>3 that other kinds of things, you know, under the</p> <p>4 Commissions purview are proper, et cetera, and</p> <p>5 that's Ashley's role.</p> <p>6 Linda Thomas, you know, would have</p> <p>7 been, you know, capable of speaking to, you know,</p> <p>8 any employee about -- or I'm sorry, any appointing</p> <p>9 authority about, you know, disciplinary issues, but</p> <p>10 I think I've already stated that, based on a recent</p> <p>11 conversation I had with Miss Thomas, she explained</p> <p>12 to me that the only conversation she had in this</p> <p>13 whole business was answering the Comptroller's</p> <p>14 initial questions about Administrative Regulation</p> <p>15 117, and she really had no interest in getting</p> <p>16 involved with it, quite frankly.</p> <p>17 Q Okay. How does that scheduled</p> <p>18 hearing of 29th, how does it actually get canceled?</p> <p>19 Is it just -- does it automatically get canceled?</p> <p>20 Or does the Commission cancel it? Or does Ashley</p> <p>21 cancel it?</p> <p>22 A Not the Commission. Ashley would</p> <p>23 cancel it.</p> <p>24 Q She cancels it herself?</p> <p>25 A Yes. And she would do that, sir, in</p>

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<p style="text-align: right;">Page 225</p> <p>1 conjunction with the -- the hearing officer. She</p> <p>2 would notify the hearing officer, first, of course,</p> <p>3 as a courtesy, and then immediately the parties so</p> <p>4 we don't have people showing up.</p> <p>5 Q Did you ever have any discussions</p> <p>6 about approving Defendant Green's requests for</p> <p>7 forced leave, or her request to withdraw the forced</p> <p>8 leaves, with anyone outside of the Comptroller's</p> <p>9 office? Or the Department of Personnel? Anyone</p> <p>10 outside of these two departments. Your department</p> <p>11 or the Comptroller's office. Anyone else?</p> <p>12 A Yes. Nancy Kistler.</p> <p>13 Q Anyone else?</p> <p>14 A No.</p> <p>15 Q Did you ever receive any pressure of</p> <p>16 any kind from anybody, in or out of the City, to</p> <p>17 approve the forced leaves?</p> <p>18 A No.</p> <p>19 MR. BLANKE: Okay. I need to take a</p> <p>20 five-minute break. We might be done, but I just</p> <p>21 want to take a five -- a -- just a five-minute</p> <p>22 break.</p> <p>23 MR. NORWOOD: Fair enough.</p> <p>24 THE VIDEOGRAPHER: Time is 3:38 PM,</p> <p>25 we are off the record.</p>	<p style="text-align: right;">Page 227</p> <p>1 wasn't sure if it was completed and they just</p> <p>2 hadn't issued it yet, or if, you know, they were</p> <p>3 still looking into it. I mean, this has been</p> <p>4 months ago, so.</p> <p>5 Q And -- and you wouldn't have any</p> <p>6 personal knowledge as to whether -- which of those</p> <p>7 two things it might be?</p> <p>8 A No, I would not.</p> <p>9 Q Do you remember anything else?</p> <p>10 Anything more specific. About the audit.</p> <p>11 A No, not about the audit at all. I</p> <p>12 remember mine. I was really happy with that, but</p> <p>13 other than that, no.</p> <p>14 Q Well, do you have anything -- was</p> <p>15 there anything else specifically that you recall</p> <p>16 that was discussed besides what you just said?</p> <p>17 A No, I think that just the other thing</p> <p>18 I, and just in an abundance of transparency, I</p> <p>19 never had a conversation about the -- the case or</p> <p>20 the allegations or anything, but the only other</p> <p>21 person I talked to was Chana when she would say the</p> <p>22 Comptroller's on the phone, you know.</p> <p>23 Q Well --</p> <p>24 A That -- that's it.</p> <p>25 Q Sticking with this conversation with</p>
<p style="text-align: right;">Page 226</p> <p>1 (Off the record.)</p> <p>2 THE VIDEOGRAPHER: The time is 3:56</p> <p>3 PM, we are back on the record.</p> <p>4 Q (BY MR. BLANKE) So, Mr. Frank, in</p> <p>5 your conversations with Defendant Green, I think</p> <p>6 you said in 2021 after the lawsuit was filed, I</p> <p>7 think?</p> <p>8 A Mm-hmm. Yes.</p> <p>9 Q And it was about Garavaglia's forced</p> <p>10 leaves, I take it? The conversation?</p> <p>11 MR. NORWOOD: Well, let me object</p> <p>12 because that mischaracterizes his testimony.</p> <p>13 Q (BY MR. BLANKE) Okay. What was it</p> <p>14 about?</p> <p>15 A The conversation was actually about</p> <p>16 concerns about the state audit.</p> <p>17 Q And what -- what specifically were</p> <p>18 her concerns?</p> <p>19 A Just that there was going to be</p> <p>20 negative findings about the Comptroller's office's</p> <p>21 result of things that occurred in the office, so.</p> <p>22 Q Did she give you the impression that</p> <p>23 the audit was still ongoing? The audit of the</p> <p>24 Comptroller's office?</p> <p>25 A It was kind of ambiguous. I -- I</p>	<p style="text-align: right;">Page 228</p> <p>1 Green, though, in 2021, did you -- did she discuss</p> <p>2 anything with you specifically with regard to what</p> <p>3 she was worried about with regard to the audit?</p> <p>4 A No. As a matter of fact, just to</p> <p>5 amplify on that, I didn't even know that -- that</p> <p>6 municipal courts was involved. I stated I thought</p> <p>7 it was something to do with corrections, but --</p> <p>8 Q What does that mean?</p> <p>9 A Pardon?</p> <p>10 Q What do you mean, corrections? What</p> <p>11 does that mean?</p> <p>12 A The correctional division, I thought</p> <p>13 there might have been some concerns about the</p> <p>14 correctional division, but --</p> <p>15 Q She said that, or you just thought</p> <p>16 that?</p> <p>17 A No, I -- I might have thought that --</p> <p>18 I might have been mistaken because I was also</p> <p>19 called -- called as an expert witness in some -- by</p> <p>20 a different firm about some issues with</p> <p>21 corrections, so it just may -- may have -- may have</p> <p>22 been, you know, my memory.</p> <p>23 I thought that during the initial</p> <p>24 conversation, though, that Judy Armstrong had --</p> <p>25 had mentioned that as a particular department but</p>

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<p>1 I'm not sure. We did not discuss any of the</p> <p>2 specifics other than the gravity of what the</p> <p>3 allegations were.</p> <p>4 Q I'm lost as to why the -- what does</p> <p>5 the Department of Corrections have to do with</p> <p>6 anything? Would --</p> <p>7 A I'm not sure that it does. I just</p> <p>8 said I thought that Judy Armstrong started, you</p> <p>9 know, a discussion that there were perhaps problems</p> <p>10 with something to do in corrections. In -- in</p> <p>11 terms of -- of, um, you know, the funds or</p> <p>12 contracts or whatever. We didn't get into specific</p> <p>13 details about it.</p> <p>14 Q Okay.</p> <p>15 A But I don't remember ever having</p> <p>16 heard anything.</p> <p>17 Q Would this have related to anything</p> <p>18 that had to do with -- with Mr. Garavaglia?</p> <p>19 A Yeah, it was -- it would have been in</p> <p>20 connection with the original conversation that I</p> <p>21 had with Judy Armstrong that was set up by Chana</p> <p>22 Morton that Saturday. But I'm -- I'm not sure it</p> <p>23 was corrections or not. I -- I might have been</p> <p>24 mistaken with that.</p> <p>25 Q Did you take any notes of that -- of</p>	<p>1 was ongoing during this period of time. Is that</p> <p>2 your understanding?</p> <p>3 A Yes.</p> <p>4 Q All right. And at the time you had</p> <p>5 your discussion with Judy Armstrong that you</p> <p>6 identified on this Saturday before the</p> <p>7 pre-termination notice -- so we're talking about</p> <p>8 the Saturday before July 2nd; right?</p> <p>9 A Yes.</p> <p>10 MR. BLANKE: You said -- you said</p> <p>11 "pre-termination."</p> <p>12 MR. NORWOOD: I'm sorry --</p> <p>13 (Overtalking - inaudible.)</p> <p>14 MR. NORWOOD: -- let me withdraw.</p> <p>15 (Overtalking - inaudible.)</p> <p>16 Q (BY MR. NORWOOD) The forced leave.</p> <p>17 A Yes.</p> <p>18 Q The first forced leave.</p> <p>19 A Yeah.</p> <p>20 Q Okay. July 2, 2019, was the first</p> <p>21 forced leave notification and communication and</p> <p>22 approval by you; correct? July 2nd --</p> <p>23 A Right.</p> <p>24 Q -- 2019; right?</p> <p>25 A Yeah, and I don't have my calendar.</p>
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<p>1 either of those conversations?</p> <p>2 A No, no, no, be -- no, I did not. I</p> <p>3 had asked them again pur -- and reminded them that</p> <p>4 pursuant to the administrative regulation, that</p> <p>5 they needed to follow up with me within the 72</p> <p>6 hours and, you know, to request that and --</p> <p>7 Q To the best of your knowledge, when</p> <p>8 you were talking to Miss Green in 2021 -- first of</p> <p>9 all, that was a phone call, or on -- or in person?</p> <p>10 A No, I haven't seen Miss Green for</p> <p>11 some time. It was a phone call. She called me</p> <p>12 maybe at like 5:30, 6 o'clock at night.</p> <p>13 Q Do -- do you know whether there was</p> <p>14 anyone else on the phone, on that phone</p> <p>15 conversation?</p> <p>16 A No, there would not have been because</p> <p>17 this was from her private number.</p> <p>18 Q Okay. And -- anything else?</p> <p>19 MR. BLANKE: That'll be it for now.</p> <p>20 RE-EXAMINATION</p> <p>21 QUESTIONS BY MR. NORWOOD:</p> <p>22 Q Okay. Let me try to wind things down</p> <p>23 quickly. Do you know -- well. Throughout the</p> <p>24 correspondence and communication and your</p> <p>25 understanding, this was a -- an investigation that</p>	<p>1 I believe that would be a Monday. It was a Monday.</p> <p>2 Q Whether it was a Monday or a</p> <p>3 Tuesday --</p> <p>4 A It was --</p> <p>5 Q -- the Saturday before that is when</p> <p>6 you would have had the conversation.</p> <p>7 A Yes. That, I recall.</p> <p>8 Q All right. And do you know what</p> <p>9 additional information was unearthed between the</p> <p>10 time you had the discussion with them the Saturday</p> <p>11 before the first forced leave and the time when the</p> <p>12 pre-termination notice was actually issued in</p> <p>13 August?</p> <p>14 A In August? No.</p> <p>15 Q I mean, so in other words, you don't</p> <p>16 know what was being unearthed during this</p> <p>17 investigative process; is that a fair statement?</p> <p>18 A Very fair.</p> <p>19 Q All right. And is it common for</p> <p>20 appointing authorities to provide you with that</p> <p>21 kind of detail in order to get you to approve or</p> <p>22 sign off on a forced leave?</p> <p>23 A No, they generally just talk to me</p> <p>24 about what type of general behavior, like bullying,</p> <p>25 harassment, refusal -- I mean refusal to test for</p>

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<p style="text-align: right;">Page 233</p> <p>1 drugs, alcohol, drug alcohol failure.</p> <p>2 As a matter of fact those are even</p> <p>3 delegated to my employee relations manager. So</p> <p>4 they typically just will give me an outline that</p> <p>5 there was serious harassment at work, or</p> <p>6 falsification of records, things like that.</p> <p>7 Q But not the details about the</p> <p>8 specifics, allegations, or anything of that sort?</p> <p>9 A No. The details are required in the</p> <p>10 pre-disciplinary review notice or the</p> <p>11 pre-termination hearing -- or not hearing,</p> <p>12 pre-termination review notice. That's when, under</p> <p>13 our rules and under our perception of -- of due</p> <p>14 process, that you need to give the person ample</p> <p>15 time to review and -- and really list through those</p> <p>16 specifics.</p> <p>17 Q Okay. Do you know if the</p> <p>18 Comptroller's office prepared different drafts of</p> <p>19 communications before they were either sent out</p> <p>20 to you or before they may have been sent out to</p> <p>21 Mr. Garavaglia? Do you know that?</p> <p>22 A I had no personal knowledge of that</p> <p>23 until when I saw the different letters today.</p> <p>24 Q Okay. So -- so that's something you</p> <p>25 wouldn't have been privy to in terms of --</p>	<p style="text-align: right;">Page 235</p> <p>1 Deputy City Counselor.</p> <p>2 A Yeah.</p> <p>3 Q Thank you.</p> <p>4 And so it was your understanding that</p> <p>5 she was working with counsel to -- as part of this</p> <p>6 process?</p> <p>7 A Yes.</p> <p>8 Q All right. Based upon your</p> <p>9 interactions with the Comptroller's office, was it</p> <p>10 your impression that they were trying to make sure</p> <p>11 that this thing was done correctly in accordance</p> <p>12 with the procedures in your office and the</p> <p>13 administrative regulations?</p> <p>14 A Yes, sir, I -- I believe so because</p> <p>15 that's why they called me on a Saturday afternoon</p> <p>16 and still waiting -- until waiting for Monday</p> <p>17 morning.</p> <p>18 Q Okay. I want to get some clarity on</p> <p>19 the question of the forced leave and your approval.</p> <p>20 If a request for forced leave comes to you and you</p> <p>21 don't approve it, can the appointing authority make</p> <p>22 it happen on their own without your approval?</p> <p>23 A No, it's discretionary.</p> <p>24 Q With you?</p> <p>25 A Yes. With me.</p>
<p style="text-align: right;">Page 234</p> <p>1 A No.</p> <p>2 Q -- what was happening internally in</p> <p>3 her office regarding draft communications; correct?</p> <p>4 A No. Sometimes some appointing</p> <p>5 authorities will, rarely, but sometimes they might</p> <p>6 give me a draft letter to review, but usually they</p> <p>7 do not.</p> <p>8 Q Okay.</p> <p>9 A Usually do not.</p> <p>10 Q And you've testified that it was your</p> <p>11 understanding the Comptroller's office was working</p> <p>12 with the City Counselor's office through Miss</p> <p>13 Kistler in this process; correct?</p> <p>14 A Yes.</p> <p>15 MR. BLANKE: Let me just object, I</p> <p>16 still don't think that in redirect you can lead the</p> <p>17 witness, so leading.</p> <p>18 Q (BY MR. NORWOOD) Well, do you know</p> <p>19 whether or not the Comptroller was working with</p> <p>20 Assistant City Counselor Nancy Kistler as it</p> <p>21 relates to this matter?</p> <p>22 MS. HAMILTON: Deputy.</p> <p>23 A Yes. Deputy City Counselor Nancy</p> <p>24 Kistler.</p> <p>25 Q (BY MR. NORWOOD) Okay, I'm sorry,</p>	<p style="text-align: right;">Page 236</p> <p>1 Q So you're -- you're -- if you, in</p> <p>2 this case, decided that the forced leave was</p> <p>3 improper and you disapproved it, that would have</p> <p>4 been the end of it; correct?</p> <p>5 A Yes.</p> <p>6 Q All right. And that's by the</p> <p>7 regulation?</p> <p>8 A Yes.</p> <p>9 MR. BLANKE: Objection, leading.</p> <p>10 Try.</p> <p>11 Q (BY MR. NORWOOD) All right. Is it</p> <p>12 by the regulation?</p> <p>13 A It is by the regulation.</p> <p>14 Q And the regulation we're talking</p> <p>15 about is Administrative Regulation 117 --</p> <p>16 A Yes.</p> <p>17 Q -- is that right?</p> <p>18 A That is correct.</p> <p>19 Q All right. And -- and just so I'm</p> <p>20 clear and the record's clear, is it -- do different</p> <p>21 appointing authorities reach out to you in your</p> <p>22 office in order to get clarity on procedures as it</p> <p>23 relates to forced leave, pre-termination; is that</p> <p>24 common?</p> <p>25 A They did it frequently.</p>

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<p>1 Q Okay. And you talked about forced</p> <p>2 leave being one of those things that is tricky?</p> <p>3 A Yes.</p> <p>4 Q All right. And so in that context,</p> <p>5 were you getting a lot of requests?</p> <p>6 A Yes.</p> <p>7 Q For clarity?</p> <p>8 A Yes.</p> <p>9 Q Okay. Let's go to -- this is the</p> <p>10 packet that we received from counsel --</p> <p>11 A Thank you.</p> <p>12 Q (BY MR. NORWOOD) -- the non-indexed</p> <p>13 batch --</p> <p>14 (Overtalking - inaudible.)</p> <p>15 Q (BY MR. NORWOOD) -- of documents.</p> <p>16 MR. BLANKE: Do you have --</p> <p>17 Q (BY MR. NORWOOD) And so --</p> <p>18 MR. BLANKE: This may be yours.</p> <p>19 Q (BY MR. NORWOOD) -- if we could look</p> <p>20 at page 215, it's GARAVAGLIA 215?</p> <p>21 A I just opened to it. Pardon me.</p> <p>22 It's funny after I didn't find anything all</p> <p>23 afternoon.</p> <p>24 Q But you're right there. All right.</p> <p>25 A Pardon me. Okay.</p>	<p>1 already clear on multiple records, but if you look</p> <p>2 at the August 28, 2019, letter from Ashley McClain</p> <p>3 to Mr. Schmitz and to Miss Kistler, I think we read</p> <p>4 through some of that, but I want to focus on the</p> <p>5 next to last paragraph.</p> <p>6 MR. BLANKE: Where -- where are you</p> <p>7 now?</p> <p>8 MR. NORWOOD: August 26, (sic), 2019,</p> <p>9 letter from Ashley McClain to Mr. Schmitz and Miss</p> <p>10 Kistler.</p> <p>11 MR. BLANKE: Okay.</p> <p>12 MR. NORWOOD: You talked about it.</p> <p>13 MR. BLANKE: Okay.</p> <p>14 Q (BY MR. NORWOOD) Do you have it?</p> <p>15 A Yes, I do.</p> <p>16 MR. NORWOOD: Do you have it?</p> <p>17 MR. BLANKE: Not yet, but I will. Go</p> <p>18 ahead.</p> <p>19 MR. NORWOOD: Do you have it?</p> <p>20 MR. BLANKE: I'm familiar with it,</p> <p>21 but go ahead.</p> <p>22 MR. NORWOOD: Okay.</p> <p>23 Q (BY MR. NORWOOD) All right. The</p> <p>24 last sentence says -- and this was after it was</p> <p>25 approved to officially withdraw the request for</p>
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<p>1 Q All right. You must be ready to go.</p> <p>2 July 23, 2019, that is the letter from Mr. Paul</p> <p>3 Schmitz to the Civil Service Commis -- Miss McClain</p> <p>4 at the Civil Service Commission; correct?</p> <p>5 A Yes.</p> <p>6 Q And in that letter, if we go to the</p> <p>7 second line, it says, quote, (Quote as read):</p> <p>8 As a new notice was issued on</p> <p>9 July 18, 2019, this letter serves as</p> <p>10 timely notice of his request to</p> <p>11 appeal this second placement of</p> <p>12 forced leave effective July 18, 2019,</p> <p>13 by the Appointing Authority, Darlene</p> <p>14 Green, the Comptroller, City of</p> <p>15 St. Louis.</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q So that -- does that suggest to you</p> <p>19 that at least as of July 23, 2019, Mr. Garavaglia</p> <p>20 and Mr. Paul -- Paul Schmitz had received</p> <p>21 notification of this July 18, 2019, forced leave</p> <p>22 letter?</p> <p>23 A Yes.</p> <p>24 Q All right. And I just want to make</p> <p>25 sure we get clear on the record, and I think it's</p>	<p>1 forced leave dated July 18, 2019. After that, as</p> <p>2 part of that communication from Miss McClain, the</p> <p>3 third paragraph says, quote, (Quote as read):</p> <p>4 Any accrued leave time Mr. Garavaglia</p> <p>5 used during this period of forced</p> <p>6 leave from July 18, 2019, through</p> <p>7 August 28, 2019, shall be restored.</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And is it your understanding that in</p> <p>11 fact that did occur?</p> <p>12 A Yes. That would -- that would occur</p> <p>13 because a copy of this would have gone to my</p> <p>14 executive secretary who would take it to personnel</p> <p>15 services who would physically make sure that was</p> <p>16 done.</p> <p>17 Q Okay. And so effectively, it's like</p> <p>18 it didn't happen?</p> <p>19 A Pro forma, yeah, yeah.</p> <p>20 Q Right. And then Mr. Garavaglia was</p> <p>21 getting paid during this particular time?</p> <p>22 A Yes.</p> <p>23 Q Okay.</p> <p>24 MR. NORWOOD: All right. I have no</p> <p>25 further questions at this time.</p>

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<p>1 MR. BLANKE: Um, are you going to ask 2 any questions? 3 MS. HAMILTON: No. 4 MR. BLANKE: Okay. Hold -- hold on 5 one second. 6 (Off the record.) 7 MR. BLANKE: Okay, I do have a 8 question. 9 RE-EXAMINATION 10 QUESTIONS BY MR. BLANKE: 11 Q You saw Judge Frawley's Order that 12 says that if a Civil Service Commission overruled 13 the forced leave, any vacation time that he took 14 would not be restored; correct? 15 A That's correct. 16 Q The rule is different when the 17 request is withdrawn? 18 A If the request is withdrawn, then 19 it's as if the employee were never on forced leave 20 and they would be paid for any time they were 21 taking except for the fact that their vacation 22 would not be restored if they took that vacation 23 time. 24 Q So -- so then this is not correct. 25 This letter from Miss McClain. This sentence that</p>	<p>1 different between -- if the civil service -- about 2 restoring vacation time, is the rule different 3 about restoring vacation time when the Civil 4 Service Commission overrules the forced leave 5 versus when the Comptroller withdraws the forced 6 leave? 7 A No. The rule can't be different 8 because it's not only contained in my 9 administrative regulation, but it's also contained 10 in, you know, our compensation ordinance, which is 11 adopted into law by the Civil Service Commission, 12 the Board of Aldermen, and the mayor. 13 Q Okay. So I am completely flummoxed, 14 and it's probably my fault, but Miss McClain is 15 saying in this letter of August 28, and I quote, 16 (Quote as read): 17 Any accrued leave time Mr. Garavaglia 18 used during this period of forced 19 leave from July 18, 2019, through 20 August 28, 2019, shall be restored. 21 Did I read that correctly? 22 A No, actually, that's -- that's a good 23 -- a good catch and, again, this is a -- a tricky 24 thing, but a rescission is if it never happened. 25 So I mean that would be correct. And my opinion as</p>
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<p>1 Mr. Norwood just read. McClain says "Any accrued 2 leave time." Not paid -- paid -- not paid -- not 3 payments but (Quote as read): 4 Any accrued leave time that 5 Mr. Garavaglia used during this 6 period of forced leave shall be 7 restored. 8 That's not correct, then, is it -- 9 MR. NORWOOD: Well -- 10 Q (BY MR. NORWOOD) -- or is it? 11 MR. NORWOOD: -- let me object that 12 assumes facts that are inconsistent with your 13 client's affidavit. But subject to that. 14 A What Ms. McClain is saying is that 15 any that he used should be restored, you know, if 16 he chose to use it, you know, so -- so that's -- 17 that's the point, is that Ms. McClain, since there 18 was no forced leave hearing, you know, wouldn't 19 necessarily know whether or not, you know, the 20 person had chosen to take accrued vacation and 21 compensatory leave or not, just as like I wouldn't. 22 That's not something we would 23 normally know until some kind of hearing and 24 resolution, you know, were -- were reached. 25 Q (BY MR. BLANKE) Is the rule</p>	<p>1 former director is if you rescind it and you used 2 any -- any time, but that might call for a legal -- 3 MR. NORWOOD: Yeah, let's not -- 4 A -- rendering, I -- that's a little 5 over my head right now. 6 MR. NORWOOD: All right. Great. 7 Q (BY MR. BLANKE) Well, then, I won't 8 ask for what your opinion is on the merits of that 9 question -- 10 A Yeah. 11 Q -- but so is it now your testimony 12 that you don't know whether what she's saying is 13 correct or not? 14 A Yeah, in the case of -- I -- I don't 15 know for certain if the -- because what -- what I 16 am aware of are the parameters of the -- the 17 Administrative Reg 117, which states that, again, 18 if you use the time to stay in paid -- paid status 19 when you're in forced leave, you know, and then -- 20 then you're paid, you know, that's it. 21 But, you know, a rescission of a 22 forced leave isn't entirely different. In that 23 case, you know, if you used your time, that time 24 would be restored, and we've done that in the past. 25 So I believe Miss McClain's correct</p>

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<p>1 but I would defer, you know, to our law department</p> <p>2 for a final reading on that.</p> <p>3 Q Just one more thing. And switching</p> <p>4 back from McClain back to Judge Frawley, he clearly</p> <p>5 says in his Order of August 22, 2019, (Quote as</p> <p>6 read):</p> <p>7 but if the forced leave is</p> <p>8 disapproved, the employee will not</p> <p>9 be restored his vacation leave.</p> <p>10 Correct? That's his finding; right?</p> <p>11 His ruling. Correct?</p> <p>12 MS. HAMILTON: I would --</p> <p>13 MR. NORWOOD: Let me object --</p> <p>14 MS. HAMILTON: I will just object</p> <p>15 that it's been asked and answered, the document</p> <p>16 speaks for itself. Subject to that, you can</p> <p>17 answer.</p> <p>18 A If the forced leave is disapproved</p> <p>19 and the employee were out for two or three days, I</p> <p>20 would order that that person have their vacation</p> <p>21 and compensatory time restored. Because that --</p> <p>22 Q (BY MR. BLANKE) Contrary -- contrary</p> <p>23 to Judge Frawley's ruling?</p> <p>24 A No, that's really what he's -- or I</p> <p>25 guess I'm saying what -- what Ashley McClain said</p>	<p>1 QUESTIONS BY MR. NORWOOD:</p> <p>2 Q Do you know if, in this case,</p> <p>3 Mr. Garavaglia submitted an affidavit to the court</p> <p>4 swearing under oath that he got all of that back?</p> <p>5 The accrued time and vacation time he may have</p> <p>6 taken? Do you know if --</p> <p>7 A I don't know.</p> <p>8 MR. NORWOOD: All right. I have no</p> <p>9 further questions.</p> <p>10 MR. BLANKE: Okay. That's all folks.</p> <p>11 You want to talk to him about signature?</p> <p>12 THE WITNESS: All right. Thank you.</p> <p>13 MS. HAMILTON: Yeah, we'll read and</p> <p>14 sign.</p> <p>15 THE VIDEOGRAPHER: Time is 4:19, we</p> <p>16 are off the record. This concludes our deposition</p> <p>17 of Richard Frank.</p> <p>18 THE REPORTER: Mr. Norwood, do you</p> <p>19 like an e-tran?</p> <p>20 MR. NORWOOD: Yep.</p> <p>21 THE REPORTER: Exhibits, or does</p> <p>22 everybody --</p> <p>23 MR. NORWOOD: Let me do this. To</p> <p>24 make it easier for you, I'm going to give you those</p> <p>25 exhibits. How about that?</p>
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<p>1 is correct, I think Judge Frawley misread</p> <p>2 Administrative Regulation 117 in terms of forced</p> <p>3 leave.</p> <p>4 Q Okay. That explains it.</p> <p>5 A Yeah, it does. And pardon me, but</p> <p>6 I've also had judges grant relief when -- when it</p> <p>7 didn't exist. Very --</p> <p>8 Q Sure.</p> <p>9 A -- prominent judges, so.</p> <p>10 Q But at least I understand what you're</p> <p>11 saying now.</p> <p>12 A I understand. Thank you very much</p> <p>13 for the conflict there, but...</p> <p>14 MR. BLANKE: Did you get all that?</p> <p>15 THE VIDEOGRAPHER: I got all that.</p> <p>16 MR. BLANKE: Thank God.</p> <p>17 THE WITNESS: I'm sorry.</p> <p>18 MR. BLANKE: Okay.</p> <p>19 THE WITNESS: These hearing officers</p> <p>20 don't ask me before they issue their orders.</p> <p>21 MR. BLANKE: Okay. I don't have</p> <p>22 anything further.</p> <p>23 MR. NORWOOD: I just have one. Maybe</p> <p>24 two.</p> <p>25 RE-EXAMINATION</p>	<p>1 THE REPORTER: Thank you.</p> <p>2 MS. HAMILTON: I'll take an E-tran</p> <p>3 with the exhibits.</p> <p>4 MR. BLANKE: E-tran is fine and I</p> <p>5 don't need the exhibits. And a word index, please,</p> <p>6 also.</p> <p>7 (Wherein, the taking of the instant</p> <p>8 deposition ceased at 4:19 PM)</p> <p>9 (Deposition to be read and signed by</p> <p>10 the witness.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 CERTIFICATE OF REPORTER	1 ERRATA SHEET
2	Witness Name: RICHARD R. FRANK
3 I, TARA SCHWAKE, a Registered	2 Case Name: JAMES GARAVAGLIA v. CITY OF ST. LOUIS, et
4 Professional Reporter and Notary Public within and	al.
5 for the State of Missouri, do hereby certify that	3 Date Taken: MARCH 10, 2022
6 the witness whose testimony appears in the	4
7 foregoing deposition was duly sworn by me; that the	5 Page # _____ Line # _____
8 testimony of said witness was taken by me to the	6 Should read: _____
9 best of my ability and thereafter reduced to	7 Reason for change: _____
10 typewriting under my direction; that I am neither	8
11 counsel for, related to, nor employed by any of the	9 Page # _____ Line # _____
12 parties to the action in which this deposition was	10 Should read: _____
13 taken, and further that I am not a relative or	11 Reason for change: _____
14 employee of any attorney or counsel employed by the	12
15 parties thereto, nor financially or otherwise	13 Page # _____ Line # _____
16 interested in the outcome of the action.	14 Should read: _____
17	15 Reason for change: _____
18	16
19  	17 Page # _____ Line # _____
20 Notary Public in and for	18 Should read: _____
21 The State of Missouri	19 Reason for change: _____
22	20
23	21 Page # _____ Line # _____
24	22 Should read: _____
25	23 Reason for change: _____
	24
	25 Witness Signature: _____
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1 ALARIS LITIGATION SERVICES	1 STATE OF _____)
2	2
3 March 16, 2022	3 COUNTY OF _____)
4	4
5 Ms. Sheena Hamilton, City Counselor	5 I, RICHARD R. FRANK, do hereby certify:
6 City of St. Louis, Law Department	6 That I have read the foregoing deposition;
7 City Counselor's Office	7 That I have made such changes in form
8 1200 Market Street, Room 314	8 and/or substance to the within deposition as might
9 St. Louis, Missouri 63103	9 be necessary to render the same true and correct;
10 IN RE: JAMES GARAVAGLIA v. CITY OF ST. LOUIS, et	10 That having made such changes thereon, I
11 al.	11 hereby subscribe my name to the deposition.
12 Dear Ms. Hamilton:	12 I declare under penalty of perjury that the
13 Please find enclosed your copies of the deposition of	13 foregoing is true and correct.
14 RICHARD R. FRANK taken on March 10, 2022 in the	14 Executed this _____ day of _____,
15 above-referenced case. Also enclosed is the original	15 20____, at _____.
16 signature page and errata sheets.	16
17 Please have the witness read your copy of the	17
18 transcript, indicate any changes and/or corrections	18
19 desired on the errata sheets, and sign the signature	19
20 page before a notary public.	20 RICHARD R. FRANK
21 Please return the errata sheets and notarized	21
22 signature page within 30 days to our office at 711 N	22
23 11th Street, St. Louis, MO 63101 for filing.	23 NOTARY PUBLIC
24 Sincerely,	24 My Commission Expires:
25 TARA SCHWAKE	25
Enclosures	

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